This brief is based on a hypothetical fact pattern from an advanced legal research and writing class. The research, analysis, and writing are substantially my own, including revisions based on comments provided by my professor.

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I. INTRODUCTION

The Navajo people have a right to reclaim their power. Power that has been stolen and wielded against them for hundreds of years. For many years, the Navajo people have been forced to choose: to choose between their native tongue or English; to choose between assimilation or punishment; to choose between life or death. But through the many threats and attacks on their person, there has been one shining light that is central to preserving their heritage and identity: the Navajo language.

The Equal Employment Opportunity Commission ("EEOC" or "Plaintiff"), on behalf of four Navajo employees – Suzanne Pierce, Loretta Nez, Freda Locklear, and Doris Begay (collectively the "Charging Parties") – brings a Title VII claim against Sean, Sarah, and Brett Miller ("the Millers" or "Defendants"), the owners of Burger Stop Drive In ("Burger Stop"). The Millers implemented a blanket English-only policy that prohibited Navajo employees from speaking in their native tongue, powerfully forcing Navajo employees to choose between their identity or financial security. Contrary to the Millers' alleged aims, the English-only policy does not alleviate employee turnover or feelings of alienation and inadequacy amongst employees; it only exacerbates them.

Defendants move for partial summary judgment on Plaintiff's disparate impact claim, alleging that the English-only policy was well-founded and does not disparately impact Navajo employees. But Defendants' assertions are misguided. First, the English-only policy has a significant adverse effect on the terms, conditions, and privileges of employment. Second, the Millers lack a legitimate business need for adopting the policy. Finally, there are other, less discriminatory practices that the Millers could adopt that would serve their business needs. Thus, Defendants' motion for partial summary judgment should be denied.

This Court has both a moral and legal obligation to not let history repeat itself, and to ensure that employers do not overstep the safeguards of Title VII. It is not enough to

just stand with Indigenous people; we must also believe them. The Court can do this by denying the Defendants' motion for partial summary judgment.

II. STATEMENT OF FACTS

Sean, Sarah, and Brett Miller own and operate Burger Stop, a fast-food restaurant located in Winslow, Arizona. Declaration of Sean Miller ("Miller Decl.") ¶¶ 1, 4. The small town of Winslow borders the Navajo Nation and over half of Burger Stop's customers and ninety percent of its employees are Navajo. *Id*. at ¶¶ 4, 5.

The Navajo Nation is home to more than 250,000 Navajos and covers more than 27,000 square miles. Declaration of Angela Diaz ("Diaz Decl.") ¶ 4. For over 80 years, Navajo children were "Americanized" and sent to government boarding schools, where "their hair was cut off, their names were changed, and their possessions were burned." *Id*. At these boarding schools, Navajo children were taught English and prohibited from speaking Navajo. *Id*. Children who disobeyed "were beaten and forced to eat lye soap." *Id*. Given this cultural genocide, the "Navajo language is central to the cultural heritage and identity of the Navajo Nation." *Id*. To preserve the Navajo culture and history, the Navajo Nation encourages its members to speak Navajo. *Id*.

In August 2021, the Millers posted a sign in the restaurant, kitchen, and break room that read "Please, No Navajo." Miller Decl. ¶ 7. In September and October 2021, Burger Stop began to lose employees. Deposition of Sean Miller ("Miller Dep.") 11:5-10. In October 2021, Lily Hunt, a Navajo employee, experienced sexual harassment from two male Navajo employees but did not alert the Millers of the problem until late November 2021. Deposition of Lily Hunt ("Hunt Dep.") 3:03-15. In January 2022, months after the harassment reportedly stopped, the Millers implemented an English-only policy. *See* Hunt Dep. 3:23-25; Miller Decl. ¶ 13. The English-only policy read:

> The owner of this business can speak and understand only English. While the owner is paying you as an employee, you are required to use English at all times. The only exception is when the customer cannot understand

> English. If you feel unable to comply with this requirement, you may find another job.

Out of 19 employees, 15 employees signed the policy. Miller Decl. ¶ 14. The written policy does not provide an exception permitting employees to speak non-English during break periods. Miller Decl. ¶14; Declaration of Suzanne Pierce ("Pierce Decl.") ¶ 5. While the Millers orally explained that the policy would not be enforced during breaks, this was never codified or written into the policy. *See* Miller Decl. ¶ 14. Sean Miller told the employees that even unintentional slips into Navajo would violate the policy, and those who violated the policy would no longer receive their shift preferences. *Id*. But "code switching," or the "unconscious switching between languages" cannot be "turned off" and is more likely to occur "when speaking informally with members of the same cultural group." Diaz Decl. ¶7(b). "What takes [a Navajo employee] once to explain in Navajo can take two or three times as long as in English." Pierce Decl. ¶ 6. The written policy does not apply to the Millers, who regularly speak Polish in the restaurant with relatives and each other. Miller Dep. 10:05-12; Pierce Decl. ¶ 8. The Millers have also treated violations of the English-only policy differently amongst employees. The Millers terminated four employees who refused to sign the English-only policy, but gave another employee, Bill Redstone, a notation in his file for violating the policy. *See* Miller Decl. ¶¶ 15, 16. Mr. Redstone called out in Navajo to a group of customers to warn them about a wet floor. *Id*. at 16. He was soon publicly confronted by Sarah Miller and reprimanded accordingly. *Id*.

Burger Stop is open seven days a week from 11am to 11pm, but the Millers are collectively on site for roughly 20 hours a week. *See* Miller Dep. 9:7-24. Three Navajo shift managers, who all speak Navajo, primarily manage the restaurant. *See id*. 9:18-23. While all the employees at Burger Stop speak English, the Millers hired the bilingual employees in part due to their ability to speak Navajo. *See* Pierce Decl. ¶ 8. Suzanne Pierce indicated that she felt exploited by the English-only policy since it did not apply to

the Millers, and since Navajo was only permitted when it was convenient for them. *See id*.

Employee turnover at Burger Stop is not new. The Millers have owned and operated Burger Stop for more than 25 years and have continuously employed at least fifteen individuals. Miller Decl. ¶ ¶ 1-2. The Millers have hired hundreds of Navajo employees within this timeframe. *Id*. at ¶ 5. Several other fast-food businesses operate in the vicinity of Burger Stop including Taco Bell, McDonald's, and Kentucky Fried Chicken. Pierce Decl. ¶ 9. None of these competing businesses have English-only policies or have reported any problems caused by the use of Navajo. *Id*. The Millers have failed to replace the employees who left and have acknowledged that business has not improved since implementing the English-only policy. Miller Dep. 12:15-16.

III. ARGUMENT

A. Summary Judgment Standard

A court shall grant summary judgment only if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the burden of proof of establishing the absence of a genuine issue of material fact. *Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986). Only if the moving party satisfies its initial burden does the non-moving party have to present facts showing that there is a genuine issue for trial. *Id*. at 324. All facts and inferences must be construed in favor of the non-moving party. *Id*. at 325.

B. The Court should deny summary judgment because there is a genuine dispute of material fact as to whether Defendants' English-only policy violates Title VII of the Civil Rights Act.

An employer is in violation of Title VII of the Civil Rights Act of 1964 if it discriminates against an individual regarding her "compensation, terms, conditions, or

privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000. Congress intended to "achieve equality of employment opportunities and remove barriers that existed to favor an identifiable group of white employees over other employees." *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849 (1971). A plaintiff alleging discrimination under Title VII may do so under two theories of liability – disparate treatment or disparate impact. *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1484 (9th Cir. 1993). "Impact analysis is designed to implement Congressional concern with 'the consequences of employment practices, not simply the motivation.'" *Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1424 (9th Cir. 1990).

Courts assess disparate impact claims by using a three-step burden-shifting framework. *Contreras v. City of L.A.*, 656 F.2d 1267, 1271 (9th Cir. 1981). The plaintiff "must identify a specific, seemingly neutral practice or policy that has a significantly adverse impact on persons of a protected class." *Spun Steak Co.*, 998 F.2d at 1486. Once the plaintiff establishes a prima facie class, the employer must prove that the practice in question is job related for the position and consistent with business necessity. *Id.* Only if the employer provides an acceptable business justification does the burden shift to the plaintiff to prove that a less discriminatory alternative exists to accomplish the employer's business goals. *Contreras*, 656 F.2d at 1275.

Here, the Court should deny Defendants' motion for summary judgment because Plaintiff defeats summary judgment at each phase of the burden-shifting scheme. First, there is sufficient evidence by which a reasonable jury could find that the policy has created a hostile work environment. Second, Defendants have failed to meet their burden to show that the English-only policy is justified by any of the Millers' purported business needs. Finally, a reasonable juror could find several less discriminatory alternative policies that exist which can serve the same purpose.

1. Plaintiff establishes a prima facie case because the English-only policy significantly impacts the terms, conditions, and privileges of employment for Navajo employees.

A plaintiff can establish a prima facie case by showing that an English-only policy disproportionately effects the "terms, conditions, or privileges" of employment of a protected group. *Spun Steak Co*., 998 F.2d at 1486. Here, a reasonable factfinder could conclude that the English-only policy has a significant adverse effect on the privilege of conversing on the job and has fostered a hostile work environment for Navajo employees. *See id*. at 1489.

a. A reasonable juror could find that the English-only policy adversely impacts the privilege of speaking because the Millers punish minor slips of the tongue.

Regarding English-only policies, there is no disparate impact "if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference." *Spun Steak*, 998 F.2d at 1487. But an English-only policy impacts the privilege of speaking when the employer imposes penalties for minor slips of the tongue. *Id*. Further, whether an employee can comply with an English-only policy is a question of fact. *Id*. at 1488.

In *Spun Steak*, the Ninth Circuit held that the English-only policy did not have an adverse effect on the privilege of speaking on the job because the employees were bilingual and could readily comply with the policy. *Id*. at 1487. The plaintiffs were production line workers. *Id*. at 1483. The court noted that the ability to converse and make small talk – especially in an assembly line job – was a privilege of employment. *Id*. Because the plaintiffs were able to speak English, the court reasoned that they were not limited or denied the employment of speaking. *Id*. In addition, the policy did not impose penalties for inadvertent slips into Spanish. *Id*.

Conversely, the Northern District of Texas found an English-only policy that always prohibited the speaking of a language other than English in the workplace,

except when speaking to a non-English customer, was in violation of Title VII. *E.E.O.C. v. Premier Operator Servs,* Inc., 113 F.Supp.2d 1066, 1073 (N.D. Tex. 2000). There, the recruitment and hiring of the bilingual employees (who were phone operators) nearly depended upon their ability to speak Spanish and service Spanish-speaking customers. *Id.* at 1068. Soon after hire, the employer enacted a blanket English-only policy that prohibited Spanish, including during lunch and in the employee break room. *Id.* at 1069. Employees who signed the English-only memo under protest or expressed their opposition to the policy were soon terminated without notice. *Id.* The court relied on an expert who testified that adhering to an English-only policy could be "virtually impossible" in many cases due to the nature of code-switching, or the constant switch between languages. *Id.* at 1070. The employees were prone to code-switching because they spoke Spanish to customers. *Id.*

Here, the English-only policy infringes upon the privilege of speaking for Navajo employees for several reasons. First, the Navajo employees are unable to readily comply. Unlike the employees in *Spun Steak* who primarily worked individually as production line workers, the Navajo employees must communicate daily with Navajo customers and employees. Pierce Decl. ¶ 5. This is much like the employees in *Premier*, who communicated daily with Spanish speaking customers and employees. Code-switching between English and Navajo makes it more likely for Navajo employees to speak Navajo accidentally and ultimately violate the English-only policy. *See Premier*, 113 F.Supp.2d at 1070; Diaz Decl. ¶ 7(b). The risk is especially great considering at least half of Burger Stop's customers and 90 percent of its' employees speak Navajo. Miller Decl. ¶5. Speaking Navajo will be inevitable for Navajo employees due to the unconscious nature of code-switching. *See Premier*, 113 F.Supp.2d at 1070 ("such as when an employee speaks to a co-worker immediately following a conversation in Navajo with a Navajo speaking

customer"); Diaz Decl. ¶ 7(b). The question of compliance should go to the jury since it is a factual question. *Spun Steak Co*., 998 F.2d at 1488.

Second, the English-only policy subjects the Navajo employees to severe punishment for violating the policy. Sean Miller stated that employees who repeatedly violated the English-only policy – even inadvertent slips into Navajo – would no longer receive their shift preferences. Miller Decl. ¶ 14. The Millers made good on this promise when they reprimanded Bill Redstone. *Id*. Mr. Redstone called out in Navajo to warn a group of customers about a wet floor. *Id*. He was publicly confronted by Sarah Miller and subsequently reprimanded. *Id*. This is in direct contrast to the employees in *Spun Steak*, who faced no punishment for violating the English-only policy. *Spun Steak*, 998 F.2d at 1484. The Millers' punitive actions are most like *Premier*, where the employer disciplined and terminated Hispanic employees who opposed its English-only policy. *See Premier*, 113 F.Supp.2d at 1071. Accordingly, a reasonable juror could find that the English-only policy infringes upon the privilege of speaking.[1]

b. The English-only policy fosters a hostile work environment for Navajo speakers because it is strictly enforced and increases feelings of exploitation and tension amongst Navajo employees.

An English-only policy can create a hostile work environment when it exacerbates existing tensions, is combined with other discriminatory behavior, or is enforced in a draconian manner in such a way that it amounts to harassment. *Spun Steak*, 998 F.2d at 1488-89.

[1] This distinguishes our case from the "ability to comply" cases mentioned by Defendants. Defendants' Motion for Partial Summary Judgment 8. None of these cases involved policies that punished inadvertent slips of the tongue. *See Kania v. Archdiocese of Philadelphia*, 14 F.Supp.2d 730, 734-35 (E.D. Pa. 1998): *Long v. First Union Corp. of Virginia*, 894 F.Supp.933, 941 (E.D. Va. 1995); *Gonzalez v. Salvation Army*, 1991 U.S. Dist. LEXIS 21692, at *7 (M.D. Fla. June 3, 1991).

In *Spun Steak*, the Ninth Circuit held that the employer's English-only policy did not create a hostile work environment given the circumstances. *Id*. at 1489. In addition to conclusory statements, the plaintiffs presented no evidence that the policy contributed to "an atmosphere of isolation, inferiority, or intimidation." *Id*. The bilingual employees were also able to comply with the rule. *Id*. There was substantial evidence to support that the employer enacted the English-only policy to curb Spanish-speaking employees from isolating and intimidating other workers. *Id*.

Conversely, in *Maldonado*, the Tenth Circuit held that an employer's English-only policy created a hostile environment because it "burdened, threatened, and demeaned plaintiffs." *Maldonado v. City of Altus*, 433 F.3d 1294, 1301 (10th Cir. 2006). For example, the English-only policy even extended to private telephone conversations. *Id*. at 1305. There was also evidence that the policy resulted in ethnic taunting, and employees testified that the policy made them feel like second-class citizens. *Id*. at 1301. The mayor even publicly referred to the Spanish language as "garbage." *Id*.

Similarly, in *Premier*, the court held that a blanket English-only policy fostered a hostile and tense working environment. *Premier*, 113 F.Supp.2d at 1073. The policy prohibited Spanish, even in break rooms, and ultimately fostered feelings of alienation amongst Spanish-speaking employees. *Id*. There was testimony that the company president directed ethnic slurs to Spanish-speaking employees, which further exacerbated workplace tension. *Id*. at 1071.

Here, Burger Stop's English-only policy created a hostile work environment. First, the policy exacerbated existing tensions. *Spun Steak Co*., 998 F.2d at 1489. Defendants conveniently ignore the context and history in which they imposed the policy. Burger Stop, located in the small town of Winslow in Arizona, borders the Navajo Nation. Miller Decl. ¶ 4. The Navajo Nation supports 250,000 Navajos. Diaz Decl. ¶ 4. For over 80 years, Navajo Nation children were subject to assimilation, and "were taught English and

forbidden to speak Navajo." Diaz Decl. ¶ 4. Thus, when Burger Stop hangs a "Please, No Navajo" sign or implements an English-only policy, these are reminiscent of what the Navajo Nation experienced years ago. A reasonable juror could find that Defendants' actions exacerbate tensions in an already tense environment.

Second, the policy is combined with other discriminatory behavior. Reports of harassment by Navajo employees did not begin until October 2021 and was not brought to the Millers' attention until late November 2021. Hunt Dep. 3:12-15. Lily Hunt asserts that the sexual harassment stopped once Sean Miller talked to the Navajo employees. *Id*. at 3:23-25. Still, the Millers implemented the English-only policy months later in January 2022. Declaration of Yolanda Tsosie ("Tsosie Decl.") ¶ 4. While the Millers encouraged employees to speak English exclusively, Sarah and Brett Miller continued to speak Polish in the restaurant with relatives and each other. Miller Dep. 10:05-12; Pierce Decl. ¶ 8. Unlike *Spun Steak*, where the employer enacted an English-only policy to curb harassment, it is unclear why the Millers enacted such a policy months after the harassment reportedly stopped. *See* Hunt Dep. 3:23-25.

Finally, the English-only policy is enforced in a draconian manner. *Spun Steak Co*., 998 F.2d at 1489. Burger Stop terminated four employees after they refused to sign the policy. Miller Decl. ¶ 15. And just weeks after the policy was implemented, they publicly reprimanded another employee for an unintentional slip into Navajo. Pierce Decl. ¶ 10; Miller Decl. ¶ 16. While Defendants assert that he was not punished for a slip, he received a note in his personnel file for said slip. Miller Decl. ¶ 16.

In sum, here, as in *Maldonado* and *Premier*, there is sufficient evidence that the Millers' English-only policy has led to a hostile work environment.

2. The Millers' lack a legitimate business need to justify the policy because there is no racial discord amongst employees and customers, and it does no more or less in helping them adequately supervise the workplace.

Once a plaintiff has proved his or her prima facie case of discriminatory impact,

the defendant bears the burden of justifying the business practice in terms of business need. Civil Rights Act of 1964, § 701 et seq. *See also Contreras*, 656 F.2d at 1275. "[E]ven a tailored English-only rule must be justified by business necessity, if there is one that could conceivably exist." *Premier*, 113 F.Supp.2d at 1073. To satisfy the business necessity burden, a defendant's justification must be "sufficiently compelling to override the discriminatory impact created by the challenged rule" and "must effectively carry out the business purpose it is alleged to serve." *Gutierrez v. Municipal Court of Southeast Judicial Dist., Los.*, 838 F.2d 1031, 1041 (1988).[2]

The Millers implemented the English-only policy with a total disregard of business need. The policy does not serve the Millers' business needs because there is no workplace discord to correct, customers were not offended by the use of the Navajo language, and it does no more or less in helping them supervise the workplace.

a. Defendants' policy is not necessary to promote workplace harmony because there was no prior workplace discord.

An English-only policy is justified in promoting workplace harmony only when there is sufficient evidence of employees using non-English to degrade or ridicule other employees. *Gutierrez*, 838 F.2d at 1042; *Long v. First Union Corp. of Virgina*, 894 F.Supp.933, 941 (E.D. Va. 1995); *Premier*, 113 F.Supp.2d at 1070.

In *Gutierrez*, the Ninth Circuit did not accept promoting harmony amongst employees as a sufficiently compelling business necessity. 838 F.2d at 1042-43. There, employees argued that a municipal court rule requiring all employees to speak English unless translating violated Title VII. *Id.* at 1036. The court noted that

[2] The plaintiff in this case quit her job before her employer's appeal reached the Supreme Court. Thus, the Court vacated the decision as moot. While this case lacks binding precedential value, it still represents the thinking of the court. It not only constituted a decision of a three-judge panel, but it survived an en banc call. It is also the only Ninth Circuit case to discuss business necessity in the context of an English-only rule. *See Garcia v. Spun Steak Co.*, 13 F.3d 296, 301 (1993).

the employer "failed to offer any evidence of the inappropriate use of Spanish." *Id*. at 1402. Moreover, the court found a lack of evidence supporting the employer's argument that employees used Spanish to mask ridicule of non-Spanish speaking employees. *Id*. Due to the lack of evidence, the court disregarded the employer's purported business justification. *Id*. at 1043; *Maldonado*, 433 F.3d at 1236-37 (declining to affirm summary judgment based on a business necessity because "[d]efendants' evidence … in this case is scant"); *Premier*, 113 F.Supp.2d at 1066, 1070 (the court did not find any evidence of workplace 'discord' … which required harmonization" through an English-only policy.").

Here, a reasonable jury could find that the English-only policy does not "effectively carry out the business purpose" of improving work conditions nor increasing employee recruitment and retention. *See Gutierrez*, 838 F.2d at 1039. In both *Gutierrez* and *Premier*, courts found that there was not enough evidence to prove that Spanish was causing workplace discord. *See Gutierrez*, 838 F.2d at 1042; *Premier*, 113 F.Supp.2d at 1070. Similarly, here, the Millers lack evidence to prove that the Navajo language caused discord. In fact, the discord was caused by sexual harassing comments, which were understood by employees and customers alike. *See* Miller Dep. 11:13-16. The Navajo language did not isolate anyone. Rather, the content of the conversations caused the discord. Therefore, Plaintiff casts doubt on Defendants' evidence of workplace disharmony caused by employees speaking Navajo and whether an English-only rule is the solution to mitigate the problem.

Instead of "promot[ing] 'harmony," a reasonable factfinder could find that the Millers' policy worsens work conditions by alienating Navajo employees. *See id*. The policy not only makes communication more difficult for Navajo employees but also makes them feel exploited because they are only permitted to speak in Navajo when it benefits the Millers financially. *See id*.; Pierce Decl. ¶8. Considering that the Millers have not been able to replace or rehire the four employees terminated for

refusing to sign the English-only policy, this policy creates a disruption in the workplace and adversely affects the recruitment and retention of Navajo employees. *See Premier*, 113 F.Supp.2d at 1070; Miller Dep. 12:5-12.

Defendants rely on *Long* and *Kania*, where the courts found meaningful evidence that the employees were using a non-English language to isolate and intimidate their co-workers. Defendants' Motion for Partial Summary Judgment ("Defs' MSJ") 13; *Kania*, 14 F.Supp.2d at 734-35; *Long*, 894 F.Supp. at 941. But here, the root of any discord was caused by the harassing comments and not the fact they were in Navajo. In fact, the English-only policy does nothing to prevent harassing comments in English.

b. The English-only policy is not necessary to make customers feel comfortable and welcome.

An English-only policy is a valid business defense only if an employer can prove that it is necessary to promote a polite and approachable environment for its customers. *E.E.O.C. v. Sephora USA*, LLC, 419 F.Supp.2d 408, 417 (S.D.N.Y. 2005); *Pacheco v. N.Y. Presbyterian Hosp.*, 593 F.Supp.2d 599, 621 (S.D.N.Y. 2009).

Defendants rely on two Southern District of New York cases to support their argument. Defs' MSJ 14. In *Sephora*, a court held that an English-only policy was justified by the need to enhance customer service because approachability was integral to the job of a sales employee. *Sephora*, 419 F.Supp.2d at 417. "[C]lient service [was] the core of Sephora's business[,] and the employer went so far as calling the employees "consultants[,]", the sales floor staff "the cast[,]", and the sales floor a "stage." *Id.* at 410. The court held that the English-only policy was consistent with the defendant's goal of creating a polite and approachable retail establishment. Similarly, in *Pacheco*, a district court in New York held that a hospital was justified in implementing an English-only policy because it helped the patients feel comfortable and assured that they were not being ridiculed in a foreign language. *Pacheco*, 593 F.Supp.2d 599 at 621.

Here, a jury could find that the English-only policy does not carry out its business aims of making customers feel comfortable. First, the customer's complaints focused on the use of profanity rather than the use of Navajo language. Miller Decl. ¶ 9. The customers had no problem understanding the profane comments that some employers made in Navajo, unlike the patients and customers in *Pacheco* and *Sephora* who did not understand the foreign language to begin with. *See Pacheco*, 593 F.Supp.2d at 615; *Sephora*, 419 F.Supp.2d at 416-17; Miller Decl. ¶ 9.

Second, over half of Burger Stop's customers are Navajo and speak Navajo fluently. Miller Decl. ¶ 5. Because the Navajo Nation encourages its members to speak Navajo to each other to preserve its culture and identity, the Millers wrongly assume that its customers who are predominately Navajo prefer to speak English while serviced. *See* Diaz Decl. ¶ 6. This is much different than the employees in *Pacheco* and *Sephora*, who did not service a large minority group who spoke a common language. *See Pacheco*, 593 F.Supp.2d at 614; *Sephora*, 419 F.Supp.2d at 416-17.

Third, the job responsibilities at a makeup retailer and a hospital are far more intentional than the job responsibilities at a mom-and-pop restaurant. Sephora described client service as the "core" of their success, while Sean Miller describes "making good food quickly" as the core to Burger Stop's success. *See Sephora*, 419 F.Supp.2d at 416; Miller Dep 12:19-23. Because different responsibilities exist between Burger Stop employees and the employees in *Sephora* and *Pacheco*, it makes sense that an English-only policy would be necessary in a retail store and hospital.

c. The English-only policy does not allow the Millers to adequately supervise the workplace.

An English-only policy is justified by the need to enhance supervision only if it allows a supervisor to more effectively evaluate or control the workplace. *Gutierrez*, 838 F.2d at 1043. When employers require employees to speak another language when

dealing with the non-English speaking public, an English-only policy does not enable or increase supervision if the supervisors are incapable of following the discussion. *Id*.

In *Gutierrez*, the Ninth Circuit court held that an English-only policy was not justified because the policy did no more or less in facilitating supervision. *Id*. There, bilingual deputy court clerks translated for the non-English speaking public, in addition to their other duties. *Id*. at 1036. The employer insisted on the English-only policy because several employees did not speak Spanish and could not discern whether information was correctly disseminated. *Id*. Given bilingual employees were hired for their ability to service the non-English speaking public, an English-only policy was futile because the supervisors were unable to follow the discussion. *Id*. at 1043. The best way to ensure that supervisors are kept abreast of the day-to-day productivity and communications of bilingual employees is to employ bilingual supervisors. *Id*. at 1043.

The Millers, who speak both English and Polish in the restaurant, do not have a business interest in making sure only English is spoken. *See* Miller Dep. 10:05-12; Pierce Decl. ¶ 8. First, as in *Gutierrez*, where the employer hired bilingual clerks in part to speak Spanish to Spanish-speaking customers, Burger Stop hired Navajo employees in part to speak Navajo to Navajo-speaking customers. *See* Pierce Decl. ¶ 8; *Gutierrez*, 838 F.2d at 1043. Because Burger Stop requires Navajo employees to speak Navajo to customers, the English-only policy does not help the Millers supervise since they do not understand the language, much like the supervisors in *Gutierrez*.

Second, because the Millers hired three shift managers that all identify as Navajo, this further eliminates the need for an English-only policy. *See* Miller Dep. 9:19-23; *Gutierrez*, 838 F.2d at 1043. This is only amplified by the fact that the Millers are rarely at the restaurant, at least in comparison to the three shift managers. *See* Miller Dep. 9:7-24. While Burger Stop is open seven days a week from 11am to 11pm, the Millers are collectively on site for a total of 20 hours a week. *See id*. At all other times, the three

Navajo shift managers run the restaurant. *Id*. at 9:19-20. Given this, the Millers can rely on the Navajo shift managers to keep them abreast of the day-to-day productivity and communications of Navajo employees.

Defendants rests their entire argument in this section on an unreported Florida district court case, *Gonzalez*, 1991 U.S. Dist. at *1-8. Defs' MSJ 15. There, a client complained about hearing a conversation in Spanish pertaining to condoms, and the court held that the English-only policy was necessary to monitor conversations. *Id*. at 2. The rule was narrowly tailored in *Gonzalez* but is not in our case. *Id*. In summary, Plaintiff can prove that the business defenses are not legitimate.

3. Plaintiff can establish a less discriminatory alternative that would equally serve the Millers' legitimate business goals.

Even if a factfinder finds a valid business necessity defense, a plaintiff may show that there is a less discriminatory alternative practice that could better meet the employer's needs. *Freyd v. University of Oregon*, 990 F.3d 1211, 1227 (9th Cir. 2021). The plaintiff must show that the alternative practice is equally as effective as the questionable, challenged practice. *Id*. at 1241.

In *Fitzpatrick v. City of Atlanta,* 2 F.3d 1112, 1122, (11th Cir. 1993*),* the court held that a plaintiff's suggested alternative failed because it did not equally serve the employer's business needs. The defendants proved that a no-beard rule for firefighters was warranted by business necessity. *Id*. at 1119-1120. Firefighters had to wear masks for safety reasons, and any facial hair would compromise their overall safety. *Id*. The plaintiffs could not prove that their proposed alternatives to the rule, which included partial shaving, would meet the department's safety needs and still allow firefighters to perform their essential job duties. *Id*. at 1122.

Unlike *Fitzpatrick*, alternatives exist that can effectively serve the Millers' business needs. First, the Millers could simply ban all offensive speech. *See* Pierce Decl. ¶ 8. Because all the Navajo shift managers can communicate in Navajo, they are

equipped to monitor communications effectively. Because the Millers are hardly on site, this will not be a difficult alternative to accommodate and will not pose a financial burden. Second, the Millers and the shift managers alike can also encourage employees to report anyone who uses offensive speech while working. *See* Pierce Decl. ¶ 8. This is again very cost effective and maintains the integrity of everyone's job responsibilities. Third, the Millers can narrowly tailor the English-only policy to employees who are making disparaging remarks. All alternatives equally serve the Millers' alleged goals of enhancing harmony, supervision, and customer service without unfairly punishing others.

IV. CONCLUSION

The Court must bear in mind the legal and moral obligations of upholding Title VII and reconciling the years of discrimination wielded against Indigenous people. The Court can stand with Navajo Nation and denounce a policy rooted in identity erasure. The English-only policy has a disparate impact on Navajo employees because the Millers punish accidental and inevitable slips of the tongue. The policy has also created a hostile work environment due to its draconian enforcement. The policy does not effectively serve the Millers' purported business needs because the Navajo language is not alienating to employees or customers, nor it does not allow them to better supervise the workplace. There are better, less discriminatory policies that the Millers could consider. Thus, the court should deny the Defendants' motion for summary judgment.

DATED: December 5, 2022

BY: _____

Attorney for Plaintiffs Suzanne Pierce, Loretta Nez, Freda Locklear, and Doris Begay

Applicant Details

First Name	**Julie**
Last Name	**Jones**
Citizenship Status	**U. S. Citizen**
Email Address	**juliejones@law.gwu.edu**
Address	**Address** Street **2130 P St., NW, Apt 710** City **Washington** State/Territory **District of Columbia** Zip **20037** Country **United States**
Contact Phone Number	**6103018212**

Applicant Education

BA/BS From	**Other**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/ LLB	**May 21, 2023**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**The George Washington Law Review (Notes Editor, Volume 91)**
Moot Court Experience	**Yes**
Moot Court Name(s)	**GW Law First Year Competition (Finalist)** **Van Vleck Constitutional Law Moot Court Competition (Second Place Best Oral Advocate) (Semi-Finalist)**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Kettler, Cheryl
ckettler@law.gwu.edu
202-994-0976

Schoenbaum, Naomi
nschoenbaum@law.gwu.edu
917.607.7246

Lee, Cynthia
cynthlee@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Julie Jones
2130 P Street, NW, Apartment 710, Washington, DC 20037 | (610) 301-8212 | juliejones@law.gwu.edu

March 24, 2023

The Honorable Jamar K. Walker
Albert V. Bryan Sr. United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

Dear Judge Walker:

I am a 3L at The George Washington University Law School and will be graduating in May 2023. I am writing to apply for a judicial clerkship with you for the 2024 Term. In the time between graduation and the beginning of this clerkship, I will be working as a Litigation Associate at Dechert LLP in Washington, DC.

My application packet includes my resume, law school transcript, and writing sample. I have also enclosed recommendations from Professors Cynthia Lee, Cheryl Kettler, and Naomi Schoenbaum. I am currently a Research Assistant to Professor Lee, and she was also my professor for Criminal Procedure. Professor Kettler teaches Fundamentals of Lawyering, and Professor Schoenbaum teaches Torts and Employment Law.

Thank you for your time and consideration.

Respectfully,

Julie Jones

Julie Jones

2130 P Street, NW, Apartment 710, Washington, DC 20037 | (610) 301-8212 | juliejones@law.gwu.edu

EDUCATION

The George Washington University Law School — Washington, DC
J.D. Expected — *May 2023*

GPA: 3.812

Honors: George Washington Scholar (Top 1% to 15% of Class) (All Semesters)
Van Vleck Constitutional Law Moot Court Competition (Second Place Best Oral Advocate) (Semi-Finalist)

Journal: *The George Washington Law Review* (Notes Editor, Volume 91)

Publication: Julie Jones, *Pas de Deux Between Unionization and Federal Arts Funding: Why Congress Must Address Its Overcorrection that Impeded the Freelance Dance Industry*, 30 UCLA ENT. L. REV. (forthcoming 2023).

Activities: GW Law Moot Court Board (Member)
GW Law Association for Women (Co-Director of Events, 2021-2022)
Mid-Atlantic Innocence Project (Volunteer, Case Screening Project)

Dean College — Franklin, MA
B.A., *summa cum laude*, Dance — *May 2018*

Honors: Golden Key Honour Society (Top 15% of Class)

Activities: National Society of Leadership and Success (Executive Board Member)

EXPERIENCES

Dechert LLP — Washington, DC
Litigation Associate — *Fall 2023*

The George Washington University Law School — Washington, DC
Research Assistant to Professor Cynthia Lee (Criminal Procedure) — *Fall 2022–Spring 2023*

United States Department of Justice — Washington, DC
Legal Extern, Civil Division, Consumer Protection Branch — *Fall 2022*

- Researched and drafted memoranda on case law and legislative history regarding several statutes to assist attorneys in bringing various enforcement actions
- Created and edited documents to be used by a trial team in an upcoming federal prosecution
- Collaborated with attorneys and other externs to discuss best methods behind bringing cases, engaging as a team, and conducting legal research

Dechert LLP — Washington, DC
Summer Associate — *Summer 2022*

- Researched and drafted memoranda on various litigation matters pertaining to areas of antitrust, securities, employment, and contract law
- Assisted on pro bono cases concerning human trafficking and legal name changes
- Collaborated with Summer Associates to create a proposal for the firm to use in increasing outreach to law schools

United States Attorney's Office for the District of Columbia — Washington, DC
Legal Extern, Civil Division — *Fall 2021*

- Researched and drafted legal memoranda pertaining to civil litigation matters, including issues arising under the False Claims Act, Freedom of Information Act, and Privacy Act
- Examined documents collected pursuant to an investigation into a government procurement matter and drafted a memorandum outlining facts substantiating the government's claims

Superior Court of the District of Columbia — Washington, DC
Judicial Intern, Felony Docket, Judge James A. Crowell IV — *Summer 2021*

- Researched and drafted memoranda in connection with cases before the court
- Analyzed non-compliance and alleged violation reports for use in determining whether hearings must be set or probation conditions modified

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G28990726
Date of Birth: 25-OCT

Date Issued: 06-FEB-2023

Record of: Julie Jones

Page: 1

Student Level: Law
Admit Term: Fall 2020

Issued To: JULIE JONES
JULIEJONES@GWU.EDU

REFNUM:96134013

Current College(s):Law School
Current Major(s): Law

GEORGE WASHINGTON UNIVERSITY CREDIT:

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2020			
Law School			
Law			
LAW 6202	Contracts Schooner	4.00	B
LAW 6206	Torts Schoenbaum	4.00	A+
LAW 6212	Civil Procedure Berman	4.00	A-
LAW 6216	Fundamentals Of Lawyering I Kettler	3.00	A
Ehrs 15.00 GPA-Hrs 15.00 GPA 3.733			
CUM 15.00 GPA-Hrs 15.00 GPA 3.733			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2021			
Law School			
Law			
LAW 6208	Property Nunziato	4.00	B+
LAW 6209	Legislation And Regulation Schaffner	3.00	A-
LAW 6210	Criminal Law Cottrol	3.00	A
LAW 6214	Constitutional Law I Morrison	3.00	A
LAW 6217	Fundamentals Of Lawyering II Kettler	3.00	A
Ehrs 16.00 GPA-Hrs 16.00 GPA 3.771			
CUM 31.00 GPA-Hrs 31.00 GPA 3.753			
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2021			
Law School			
Law			
LAW 6360	Criminal Procedure Lee	3.00	A
LAW 6380	Constitutional Law II Gavoor	3.00	B+
LAW 6387	Voting Rights Pershing	2.00	A-
LAW 6668	Field Placement Mccoy	2.00	CR
LAW 6671	Government Lawyering Lore	2.00	A
Ehrs 12.00 GPA-Hrs 10.00 GPA 3.733			
CUM 43.00 GPA-Hrs 41.00 GPA 3.748			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2022			
LAW 6218	Professional Responslbty/Ethic Tuttle	2.00	A
LAW 6230	Evidence Pierce	3.00	A+
LAW 6238	Remedies Trangsrud	3.00	B+
LAW 6268	Employment Law Schoenbaum	3.00	A+
Ehrs 11.00 GPA-Hrs 11.00 GPA 4.000			
CUM 54.00 GPA-Hrs 52.00 GPA 3.801			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

********** CONTINUED ON PAGE 2 **********

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G28990726
Date of Birth: 25-OCT

Date Issued: 06-FEB-2023

Record of: Julie Jones

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2022			
LAW 6364	White Collar Crime Eliason	3.00	A
LAW 6390	Employment Discrimination Law Sonderling	3.00	A
LAW 6570	Int'L Human Rights Of Women Celorio	2.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6652	Legal Drafting Grant	2.00	A-
LAW 6667	Advanced Field Placement Grillot	0.00	CR
LAW 6668	Field Placement Mccoy	3.00	CR
Ehrs 14.00 GPA-Hrs 10.00 GPA 3.867			
CUM 68.00 GPA-Hrs 62.00 GPA 3.812			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Fall 2021			
Law School			
Law			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Spring 2022			
LAW 6657	Law Review Note	1.00	----------
	Credits In Progress:	1.00	
Fall 2022			
LAW 6658	Law Review	1.00	----------
	Credits In Progress:	1.00	
Spring 2023			
LAW 6232	Federal Courts	4.00	----------
LAW 6362	Adjudicatory Criminal Pro.	3.00	----------
LAW 6595	Race, Racism, And American Law	2.00	----------
LAW 6617	Law And Medicine	3.00	----------
LAW 6658	Law Review	1.00	----------
	Credits In Progress:	13.00	

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	68.00	62.00	236.33	3.812
OVERALL	68.00	62.00	236.33	3.812

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

NOTICE TO RECIPIENT

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added: *A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to lend my enthusiastic support to Julie Jones's application for a judicial clerkship with your chambers. I know Ms. Jones particularly well because she was my student at The George Washington University Law School for the two-semester, six-credit-hour Fundamentals of Lawyering courses from August 2020 through April 2021.

Superior First-Year Performance
My relationship with Ms. Jones began in August 2020, when she became a student at GW Law. My course is a required, year-long class in which first-year law students learn research, predictive legal analysis, persuasive argumentation, legal citation, oral advocacy, and various ethics issues. I taught the course entirely online due to COVID, but altered my usual teaching approach to emphasize two activities that are ordinarily left to students' discretion. As part of the course, I assigned Ms. Jones (and her classmates) to teams to work on many of the initial assignments critical to major assignments. Students took turns acting as leaders or participants and worked with different teammates over the year.

Ms. Jones was an exceptional addition to teams. Whether she led the team or supported its work, she was a collaborator. She came prepared and made notable contributions. Based on this experience, I would anticipate that she would be an asset in your chambers because she is a down-to-earth, cooperative individual who sets high standards for her own work and can extract meaningful work from others.

Additionally, I encouraged students to attend more than the two required individual conferences that GWU Law ordinarily seeks from students. This gave me an opportunity to get to know Ms. Jones better and explore in more detail her career objectives. Ms. Jones demonstrated certain traits consistently: 1) maturity and dedication to learning her profession, well above that of some of her colleagues; 2) a comfortable rapport with supervisors, peers, and colleagues; and 3) willingness to work hard without the incentive and "compensation" of immediate grades.

By her second semester in law school, Ms. Jones produced for my class work consistently in the superior range of proficiency. I have found her legal research thorough, her legal analysis grounded in logic, and her legal writing of superior quality.

Prospects for Success in Clerkship
Legal writing courses prompt a fair amount of student anxiety. As a law student working in isolation for most of the academic year due to the virus, Ms. Jones has been on the front lines of handling those student concerns. Ms. Jones displayed an unruffled demeanor and mature advice that made her an invaluable asset to my other law students.

The handling of matters in a judge's chambers requires diplomacy, sensitivity, and the ability to maintain confidences. Ms. Jones sets very high standards for herself in these areas. I would be pleased to employ her if that opportunity arose.

In summary, Ms. Jones is everything an employer could want: committed, insightful, detail-oriented, well balanced in her analytical and communication skills, thorough in all she undertakes, able to receive and offer instruction, able to work together or independently, mature in her judgment and demeanor, reliable, and deserving of trust. These skills should serve her well in the capacity of judicial clerk. For these reasons, I unreservedly recommend her for a judicial clerkship. Please let me know if I may elaborate on these credentials.

Very Truly Yours,

Cheryl A. Kettler
Visiting Associate Professor of Legal Research & Writing

Cheryl Kettler - ckettler@law.gwu.edu - 202-994-0976

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Julie Jones for a clerkship. Ms. Jones is an accomplished student whose legal acumen and personal skills would make her an asset to your chambers.

Ms. Jones was a student in my Fall 2020 Torts class. Ms. Jones earned an A+ in the course, one of only a very few students to do so in a class of 115 students. Her exam was outstanding in the breadth of issues identified and the sophistication with which she addressed these issues. GW is a very large law school, and at the top of the class, most students have turned down opportunities to attend more elite law schools. That Ms. Jones bested these students on the exam demonstrates her outstanding legal analytical skills.

I was not surprised by Ms. Jones's exam based on her class performance. I use the Socratic method in my course, which is difficult for many students, especially in the early days of law school. Ms. Jones handled it with ease and confidence. I recall asking her about a case in which an exception arose to the typical rule of not adjusting the standard of care based on a party's mental limitations. It is tricky to discern why in this particular case, the court lowers the expectation of due care. Ms. Jones was very thoughtful on what factors in this case might have led the court to relax the rule.

Ms. Jones is sensitive to the intersection of law and policy and has brought especially meaningful contributions to class discussion on these topics. Ms. Jones is currently a student in my Employment Law class. In a class on the Supreme Court's 2009 decision in Ricci v. DeStefano on an employers' right to engage in disparate treatment to avoid disparate impact liability, I used the case as an opportunity to think about alternative hiring and promotion practices to promote equality. One alternative was a lottery system. Ms. Jones had cogent and interesting thoughts on whether this would be a beneficial alternative.

Aside from Ms. Jones's analytical skills, her personal skills would also contribute to your chambers. Ms. Jones is personable and easy-going, and would get along well with others.

Very truly yours,

Naomi Schoenbaum

Naomi Schoenbaum - nschoenbaum@law.gwu.edu - 917.607.7246

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It gives me great pleasure to highly recommend Julie Jones for a position as a judicial law clerk. Julie was a student in my Criminal Procedure class during the fall of 2021 and received an A in that class. I think so highly of Julie that I have offered Julie a position as a Research Assistant and am delighted to report that she will be working with me during her 3L year. Whether a student has excellent grades is only one thing I consider when choosing who to hire as a Research Assistant. I also think about whether the student can handle multiple projects at the same time, whether the student responds quickly to emails (not all do these days), and whether the student is hard working and has excellent research and writing skills. Most of the students I hire as Research Assistants are on the GW Law Review, as is Julie, and many hold editorships on the GW Law Review, as will Julie next year.

Julie is truly an excellent law student. She has been designated as a George Washington Scholar for each semester of law school—a recognition given only to students in the top 1 to 15 percent of their class. Not only has she received mostly A grades in law school, including an A+ in her Torts class, Julie's final exam in my Criminal Procedure class was one of the strongest exams in the class. I give very few A grades, and Julie's exam received an A grade.

Julie not only did well on the final exam, she also performed well on the quizzes and writing assignments in that class throughout the semester. I gave quizzes to the students in my Criminal Procedure course almost every single class. These quizzes had to be completed one hour before class, so the student had to do the reading assignment and take the quiz without the benefit of having the professor give them the answers to the questions. Julie not only completed each quiz by the deadline, she also received perfect scores on many of those quizzes.

I also gave the students regular writing assignments (class exercises), which were fact patterns that required the students to identify the legal issue, the applicable rules of law, make arguments for the prosecutor and defense attorney, and then advise how the judge should rule. For each class exercise assigned, the student had to do this type of legal analysis and submit their writing before class. During class, the students would meet in small groups to discuss the class exercise and formulate oral arguments. Half the class would be assigned to role play as prosecutors and the other half would be assigned to role play as criminal defense attorneys. I would then call on small groups at random to give their oral arguments. After class, students had to go back and improve upon their analysis and re-submit their writing assignment. Julie completed all of these writing assignments in a timely fashion and ended up with a perfect score on all the writing assignments.

In addition, Julie had excellent attendance, and was always prepared when called upon. Julie's law school record is consistent with her lifetime of academic achievements, as she graduated summa cum laude from Dean College in 2018.

Julie's excellence further shines through in her legal research and writing skills. She received an A for both semesters of GW Law's Legal Research & Writing class, Fundamentals of Lawyering. The first semester of this course focused on predictive writing while the second semester taught persuasive writing. The second semester presented Julie with the opportunity to write her first appellate brief and participate in her first oral argument.

As mentioned above, Julie is a member of and will soon be an editor on The George Washington Law Review. She was invited to join the Law Review after competing in a journal competition that tested Bluebooking skills and required a written analysis of a Supreme Court opinion. Last month, Julie was selected by her peers on the Law Review to serve as a Notes Editor for Volume 91—an opportunity that demonstrates how highly her peers value her editing and writing skills. I was thrilled to hear that Julie is going to be a Notes Editor, as her interest in the Note-writing process stood out to me after she took initiative to speak with me early in the fall semester about potential Note topics.

In addition to her legal research and writing experience on the Law Review, Julie has further honed her research and writing skills through various internship and externship opportunities. After her 1L year, she served as an intern to Judge Crowell on the felony docket at the Superior Court of the District of Columbia and worked extensively on compassionate release issues due to the COVID-19 pandemic. Last fall, Julie externed in the Civil Division of the United States Attorney's Office for the District of Columbia where she had the opportunity to engage with a wide variety of civil litigation matters. This summer, she will be working as a Summer Associate for Dechert LLP in Washington, DC, where she will have additional opportunities to improve her legal research and writing skills. Next year, she will be working for me as a Research Assistant. As a Research Assistant, she will further hone her legal research and writing skills.

To supplement her many academic pursuits, Julie is actively involved with the larger GW Law community. After having chosen to compete in the First Year Moot Court Competition, she was selected to become a member of the GW Law Moot Court Board. Additionally, Julie ran for an Executive Board position for the Law Association for Women and was elected by her peers to serve

Cynthia Lee - cynthlee@law.gwu.edu

as a Co-Director of Events. She chose to get involved with this organization because she plans to continue working with the Association's community of outstanding women in law. In her role as Co-Director of Events, she works to implement events for the organization, including creating and distributing care packages for 1L students and organizing panels of women lawyers to promote networking between students and practitioners. Moreover, Julie is active in paying it forward to other law students. She works in the GW Law Tutoring Program as a Torts and Criminal Procedure tutor and volunteers as a mentor to 1L students. Finally, Julie participates annually in pro bono work facilitated by GW Law and the Mid-Atlantic Innocence Project where she volunteers as a Case Screener to examine client correspondence and case history to determine whether further investigation into an incarcerated individual's alleged innocence is warranted.

For all of the foregoing reasons, I highly recommend that you hire Julie as one of your law clerks. I believe that her many outstanding qualities will prove to be valuable to your chambers. Please feel free to reach out to me if you have any questions or require any additional information.

Sincerely,

Cynthia Lee
Edward F. Howrey Professor of Law

Julie Jones

2130 P Street, NW, Apartment 710, Washington, DC 20037 | (610) 301-8212 | juliejones@law.gwu.edu

Writing Sample

The attached writing sample is an appellate brief that I drafted for the Van Vleck Constitutional Law Moot Court Competition in the fall of my 3L year. The fact pattern was crafted by two students on the GW Law Moot Court Board with oversight by Dean Alan Morrison. The problem was about a Challenge Statute in the made-up State of New Columbia that allowed voters to challenge a congressional candidate's eligibility to be placed on the ballot pursuant to requirements contained within the United States Constitution. Voters in the candidate's district brought a challenge against the candidate, alleging that he had engaged in insurrection on January 6, 2021, and was thus ineligible to run for Congress pursuant to the Fourteenth Amendment. The candidate brought this case in federal court seeking to enjoin the New Columbia Superintendent of Elections from holding the proceedings pursuant to the Challenge Statute that would determine his eligibility. The Superintendent of Elections stayed the proceedings as the litigation proceeded throughout the federal courts. Issue One dealt with whether the candidate had standing and whether the federal courts should abstain from hearing the case pursuant to the *Younger* abstention doctrine. Issue Two addressed the constitutionality of the Challenge Statute. On appeal before the Supreme Court of the United States, the candidate was seeking a reversal of the lower courts' dismissal of his complaint for lack of jurisdiction and for failing on the merits.

I worked with a partner throughout the course of the competition. I researched, wrote, and argued Issue One. The attached version of the appellate brief has benefitted from comments made by my competition partner and generalized feedback from the competition's judges. My team represented the Petitioner, Representative Smith. Our position contained within the brief is that Representative Smith has standing, the federal courts should not abstain from hearing the case, and the state statute is unconstitutional because it usurps the powers granted to the United States House of Representatives in Article I, Section V of the Constitution. For the sake of brevity, I have included only the Argument section for Issue One of the appellate brief. The arguments in Issue One hinge on the unconstitutionality of the Challenge Statute, as was argued by my partner in Issue Two

ARGUMENT

I. This Court should reverse the dismissal of Representative Smith's complaint; the Representative has Article III standing because he is about to be subjected to proceedings arising out of the unconstitutional Challenge Statute, and the *Younger* abstention doctrine does not apply because the challenge against Representative Smith is not akin to a criminal prosecution.

Representative Smith is being subjected to unconstitutional proceedings arising out of the New Columbia Challenge Statute, thus demonstrating an injury that is appropriate for the federal courts to adjudicate. Moreover, it would be improper to abstain from hearing Representative Smith's case because a federal court has a "virtually unflagging obligation" to adjudicate proper cases or controversies brought before it. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 69 (2013) (citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *See also New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989) (NOPSI) (holding that abstention was inappropriate when a state legislative proceeding was at issue because to decide otherwise would "make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States"). Representative Smith successfully shows that he has suffered an injury for Article III standing and that the federal courts should not abstain from hearing this case pursuant to *Younger*.

A. Representative Smith has established Article III standing because he has suffered a justiciable injury by being subjected to proceedings arising out of the unconstitutional Challenge Statute.

Article III of the United States Constitution gives federal courts the power to adjudicate "Cases" and "Controversies." U.S. CONST. art. III, § 2. A plaintiff must have a "personal stake" in litigation brought before the federal courts to satisfy the "Case" or "Controversy" requirement and to demonstrate standing. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 2214

(2021) (holding that the dissemination of false information by a credit reporting agency to third parties provided standing to certain plaintiffs within a class action lawsuit). Representative Smith has standing because he has suffered 1) an injury; 2) that is "likely caused by" the Superintendent of Elections; and 3) that the judicial system can adequately redress. *See id.* at 2203.

An injury must be both "concrete and particularized." *See id.* at 2203. In *TransUnion*, this Court held that the inaccurate maintenance of credit files by a credit reporting agency, combined with dissemination of the inaccurate information to third parties, was sufficient to demonstrate that a concrete injury had occurred for standing. *See id.* at 2208-09. Moreover, a future injury can be sufficiently ripe and satisfy the standing requirement if the looming injury is "certainly impending" or the future harm is at a "substantial risk" of occurring. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 161-67 (2014) (holding that the Plaintiffs sufficiently alleged an imminent injury when a state statute proscribing false statements during election campaigns affected the Plaintiffs' continued speech regarding "tax-funded abortions" because the Plaintiffs had an enforcement action brought against them before, thus making enforcement likely to happen again).

Indeed, this Court held that an injury is established by a "threatened enforcement of law" and that one need not "subject to . . . an actual arrest, prosecution, or other enforcement action" prior to challenging the law if the action is "sufficiently imminent." *Id.* at 158-59. *See also Steffel v. Thompson*, 415 U.S. 452, 454-56, 459 (1974) (holding that the Plaintiff had standing based upon a violation of his First and Fourteenth Amendment rights when he was threatened with prosecution for hand billing about Vietnam War protests and had been warned to stop twice or would likely be prosecuted if found doing it again); *Evers v. Dwyer*, 358 U.S. 202, 202-04

(1958) (holding that the Plaintiff, a Black man, had standing when his municipality enforced segregated seating on buses because he would face probable arrest if he failed to sit where he was required to by law; he was not required subject himself to arrest to establish an injury to challenge the constitutionality of the law). This Court determined that the holding in *Steffel* foreclosed a challenge to a pending administrative proceeding on ripeness grounds. *See Ohio Civ. Rts. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 625 n. 1 (1986) ("If a reasonable threat of prosecution creates a ripe controversy, we fail to see how the actual filing of [an] administrative action threatening sanctions in this case does not."). In *Ohio Civ. Rts. Comm'n*, this Court held that a religious school had standing to challenge a pending injury when the Ohio Civil Rights Commission filed an administrative proceeding against the school for engaging in sex discrimination against a former teacher. *See id.* at 621-25.

A future injury does not establish Article III standing when it is based upon a "highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410-12 (2013) (holding that the Plaintiffs did not establish standing because the Plaintiffs could not be targeted by the government with the statute at issue, and there was no evidence that the government had any intentions of using the statute in such a way that would affect the specific Plaintiffs). *See also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562-64 (1992) (holding that the Plaintiffs failed to establish an injury for standing when the alleged endangerment of certain species' abroad was tied only to the Plaintiff's "'some day' intentions" of returning to those countries to observe the animals).

In this case, Representative Smith has sufficiently alleged an injury necessary for Article III standing because he is being subjected to proceedings arising out of the unconstitutional Challenge Statute. Like in *TransUnion*, in which this Court held that certain plaintiffs within a

class action had suffered a concrete injury based upon having inaccurate credit information disseminated to third parties, here, Representative Smith's injury is concrete because a challenge has already been filed against him under the Challenge Statute and these proceedings are only paused so that his case may progress through the federal courts. *See* 141 S. Ct. at 2214; Candidate Challenge Form; R. at 1; Order Granting Pet. for Writ of Cert.; R. at 1. The certain probability of the challenge demonstrates that Representative Smith's subjugation to unconstitutional proceedings is concrete and imminent—not hypothetical.

Furthermore, this case is like *Susan B. Anthony*, in which this Court held that the Plaintiffs had an injury, albeit a future one, because the Plaintiffs had intentions of continuing with the speech at issue, the speech fell within the grasp of the state statute proscribing false statements, and an enforcement action had been brought against the Plaintiffs for the speech before. *See* 573 U.S. at 158, 161-67. Similarly here, Representative Smith is already being subjected to the Challenge Statute because a challenge has been brought by voters in his district; moreover, he is continuing to engage in conduct encompassed by the Challenge Statute by continuing to run for the United States House of Representatives and campaigning throughout this process. *See* Candidate Challenge Form; R. 1; *Smith v. Morgenthal*, No. 22-sy-0428933, at 3 (D.D.N.C. June 15, 2022); R. at 3. Thus, his actions demonstrate that he will continue to face subjugation to the proceedings arising out of the Challenge Statute which will begin immediately upon the completion of this litigation in the federal courts. *See* N.C. Gen. Stat. 107-18; R. at 1; Order Granting Pet. for Writ of Cert.; R. at 1.

Moreover, this challenge proceeding is certainly impending, and this Court has held that one need not submit to an enforcement action to establish an Article III injury. In *Steffel*, this Court held that the Plaintiff had sufficiently alleged Article III standing for violation of his First

and Fourteenth Amendment rights when he was threatened with prosecution if he continued to engage in hand billing about the Vietnam War. *See* 415 U.S. at 454-56, 459. Similarly here, Representative Smith is exercising his ability to run for a position in the United States House of Representatives, and this is being infringed upon by an unconstitutional state statute that usurps the House of Representatives' powers under Article I, Section V of the constitution. *See* Compl. at 1-2; R. at 1-2. Indeed, while the Plaintiff in *Steffel* was merely facing the threat of prosecution, Representative Smith is indisputably facing an enforcement action at the end of this litigation absent a decision in his favor. *See* 415 U.S. at 454-56, 459; Order Granting Pet. for Writ of Cert.; R. at 1. Furthermore, in *Ohio Civ. Rts. Comm'n*, this Court determined that the holding in *Steffel* mandated a finding of a religious school's standing for a future injury when a pending administrative proceeding was being brought by the Civil Rights Commission against the school for engaging in sex discrimination against a teacher. *See* 477 U.S. at 621-25 & n. 1. The administrative proceeding from *Ohio Civ. Rts. Comm'n* is akin to the Superintendent of Elections for New Columbia making a determination as to whether Representative Smith is barred from the ballot after voters challenged his constitutional eligibility pursuant to the Challenge Statute. *See id.* Thus, an injury has been satisfied in this pre-enforcement context.

Accordingly, this Court should reverse the dismissal of Representative Smith's complaint due to lack of jurisdiction under Article III because Representative Smith has a justiciable injury by being subjected to proceedings arising out of the unconstitutional Challenge Statute.

B. Younger *abstention is inappropriate because Representative Smith's case is not akin to a criminal prosecution, and, even if it were, the federal courts retain discretion to hear this case.*

The *Younger* abstention doctrine prohibits federal courts from enjoining parallel and pending criminal proceedings in a state court. *See Younger v. Harris*, 401 U.S. 37, 40-41, 43-44,

49 (1971) (holding that the district court improperly intervened in a state prosecution of the Plaintiff under its Syndicalism Act when the Plaintiff had an "adequate remedy at law" and was not going to "suffer irreparable injury" because he had the ability to raise his unconstitutional claims in state court and this prosecution was not brought in bad faith). This Court has enumerated three "exceptional" instances—indeed, the only instances—in which a federal court can invoke the abstention doctrine from *Younger*: 1) "state criminal proceedings"; 2) "civil enforcement proceedings" that are more analogous to a criminal prosecution; and 3) civil proceedings that uniquely further the "state courts' ability to perform their judicial functions." *See Sprint*, 571 U.S. at 69, 72-73, 78-80 (2013) (quoting *NOPSI*, 491 U.S. at 368) (holding that abstention was inappropriate under the "civil enforcement proceeding" prong because this was an action between two private parties that was not initiated by a state actor and the suit was not occurring to sanction Sprint for a "wrongful act").

In *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 592-93 (1975), this Court held that abstention was likely appropriate when a state civil enforcement action was "more akin to a criminal prosecution." In *Huffman*, the Plaintiff sued in federal court alleging a state nuisance statute was unconstitutional after the Defendants, a sheriff and prosecuting attorney, succeeded in a nuisance action against the Plaintiff for displaying obscene films by shutting the theater down and allowing the theater's property to be seized and sold. *See id.* at 595-98, 611-13. The Court held that this proceeding was related to criminal prosecutions regarding obscenity and that the state's interest was the same as those that "underlie its criminal laws." *See id.* at 604-05.

Considerations that have come to be known as the "*Middlesex* factors" are also relevant when federal courts are contemplating *Younger* abstention, but these factors are not dispositive. *See Sprint*, 571 U.S. 81-82. The factors look to whether 1) there is an "ongoing state judicial

proceeding"; 2) the proceedings "implicate[] important state interests"; and 3) there is an adequate opportunity to raise constitutional challenges. *See id.* at 81. *See also Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 425-28, 435 (1982) (holding that abstention was appropriate when the New Jersey Ethics Committee conducted investigations into attorneys and had disbarment decisions briefed and argued before the State Supreme Court because New Jersey has a great interest in ensuring that attorneys under the New Jersey bar were acting ethically, and the attorneys under investigation had the opportunity to raise constitutional questions). Nevertheless, if a federal court determines that *Younger* abstention is appropriate pursuant to *Sprint* and *Middlesex*, the court maintains the discretion to hear a case if 1) there is bad faith on behalf of the state actor; 2) the state law is flagrantly unconstitutional; or 3) any additional "exceptional circumstance" applies. *See Middlesex*, 457 U.S. at 437; *Younger*, 401 U.S. at 53-54.

In this case, this Court should not invoke the abstention doctrine pursuant to *Younger* because the challenge enforcement action against Representative Smith does not fall within any of the *Sprint* categories for the *Younger* abstention doctrine to apply, and, even if it did, the circumstances of this case allow for discretionary intervention by the federal courts. Here, the challenge action is not a state criminal proceeding, nor is it a proceeding in which the state court is uniquely performing its functions; thus, the only *Sprint* category that this action could fall within would be a civil enforcement proceeding that is akin to a criminal prosecution. *See Sprint*, 571 U.S. at 72.

This case cannot be considered a civil proceeding that is akin to criminal prosecution under prong two of *Sprint*. *See id.* Instead, Representative Smith's case is analogous to *Sprint*, in which this Court held that the civil action at issue was not akin to a criminal prosecution. *See* 571

U.S. at 72-73, 78-80. In *Sprint*, the case before the court was between two private and the action was not initiated with the intent of sanctioning Sprint for any wrongful conduct, thus making it incomparable to a criminal prosecution. *See id.* at 78-80. Similarly here, private parties initiated the challenge against Representative Smith and are seeking to ensure that Representative Smith is constitutionally eligible to run for Congress, not to sanction him for conduct that occurred on January 6, 2021, demonstrating that this is akin to a civil proceeding and not a criminal prosecution. *See* Notice of Candidacy Challenge - Challenge to Const. Qualifications of Representative Sean Smith; R. at 1.

Representative Smith's case is also unlike *Huffman*, in which this Court held that an enforcement action was akin to a criminal prosecution when a sheriff and state prosecutor succeeded in a nuisance action against the Plaintiff for showing obscene films because the state interest in the civil case was the same interest the state has in enforcing criminal obscenity laws. *See* 420 U.S. at 595-98, 604-05, 611-13. Here, private voters brought the challenge action against Representative Smith, and, moreover, the state interest in the Challenge Statute is candidate eligibility, not prosecution, because voters can challenge a candidate's eligibility under the Challenge Statute pursuant to any state or federal law, not only those laws that also make one vulnerable to criminal prosecution. *See* Candidate Challenge Form; R. at 1; N.C. Gen. Stat. 107-18.3(a); R. at 1. Thus, the hearing conducted by the Superintendent of Elections cannot be equated to a civil proceeding that is akin to a criminal prosecution and fails under the second prong of *Sprint*.

If this Court were to find that the *Younger* abstention doctrine should apply pursuant to *Sprint*, this Court can still exercise its discretion to hear the case. In *Middlesex*, this Court held that flagrant unconstitutionality of a state law would permit federal courts to hear a case even if

abstention would be otherwise appropriate. *See* 457 U.S. at 437. The Challenge Statute is unconstitutional because it usurps the United States House of Representatives' sole authority to determine the qualifications of its members pursuant to Article I, Section V of the Constitution. *See* U.S. CONST. art. I, § 5. In *Middlesex*, this Court also retained discretion to hear a case for any "exceptional circumstance" that may arise—Representative Smith's case presents such a circumstance. *See* 457 U.S. at 437. If this Court abstains from hearing the case, the initial decision by the Superintendent of Elections regarding Representative Smith's eligibility will be rendered within one month. *See* N.C. Gen. Stat. 107-18.4, 107-18.6. However, the New Columbia Supreme Court need only "endeavor" to hear oral arguments within two weeks of the Superintendent's decision; the statute does not mandate when the State Supreme Court must make a final determination. *See id.* Thus, because the election is five weeks away, the election will come and go before Representative Smith has had his constitutional claims heard and decided—rendering a final decision by the state meaningless if he is kept off of the ballot this election cycle. *See* N.C. Gen. Stat. 107-18.6; R. at 1-2. Thus, this Court retains the discretion to hear this case given the exceptional circumstances contained within the nature of the issue.

Accordingly, this Court should reverse the dismissal of Representative Smith's complaint due to lack of Article III jurisdiction and *Younger* abstention because Representative Smith has suffered an injury by being subjected to proceedings arising out of the unconstitutional Challenge Statute, and the challenge is not akin a criminal prosecution thus making *Younger* abstention inappropriate.

Applicant Details

First Name	**Victoria**
Last Name	**Jones**
Citizenship Status	**U. S. Citizen**
Email Address	**victoria.jones@law.ua.edu**
Address	**Address** Street **2311 5th St E** City **Tuscaloosa** State/Territory **Alabama** Zip **35404** Country **United States**
Contact Phone Number	**3072994834**

Applicant Education

BA/BS From	**University of Colorado-Colorado Springs**
Date of BA/BS	**May 2021**
JD/LLB From	**The University of Alabama School of Law** **http://www.law.ua.edu**
Date of JD/LLB	**May 10, 2024**
Class Rank	**50%**
Law Review/Journal	**Yes**
Journal(s)	**Journal of the Legal Profession**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gold, Russell
rgold@ua.edu
205-348-1139
Grove, Tara
tgrove@law.utexas.edu
Krotoszynski, Ronald
rkrotoszynski@law.ua.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a student at the University of Alabama School of Law. I am writing to express my interest in your chambers for the 2024-2025 term. I am an Articles Editor on the Journal of the Legal Profession and interned for Chief Judge L. Scott Coogler over the previous summer.

My summer jobs have provided me with experience in legal writing in a variety of practice areas, including transactional law and litigation, and strengthened my research skills. As a research assistant, I have become well versed in using Westlaw and Lexis to identify relevant laws and articles to resolve issues and stay up to date on emerging legal developments. In my in-house counsel position at Randall-Reilly, I gained experience in legal writing by drafting contracts for employees, vendors, and customers. As a summer clerk at Fidelity National Title Insurance, I have strengthened my research abilities by completing research projects covering different states and a variety of legal issues. My research and writing abilities help me multitask and stay on top of heavy workloads, and will make me an effective Articles Editor on the Journal of the Legal Profession this fall. In my law clerk internship with Judge Coogler, I practiced applying case law to real cases and legal writing to resolve issues. This experience solidified my interest in clerking after graduating from law school. These abilities will enable me to meaningfully contribute to your chambers.

I have attached my resume and most recent transcript. Letters of recommendation from Professor Gold, Professor Grove, and Professor Krotoszynski are enclosed as well. I have also included a copy of my seminar paper, for which I conducted empirical research. Thank you for your consideration.

Sincerely,

Victoria Jones

VICTORIA JONES

2311 5th St E
Tuscaloosa, AL 35404
307-299-4834
Victoria.jones@law.ua.edu

EDUCATION

The University of Alabama School of Law Tuscaloosa, AL
Juris Doctor Candidate, May 2024

- GPA: 3.30
- *Journal of the Legal Profession*, Articles Editor
- If/When/How, Secretary
- Latinx Law Student Association, Secretary
- Business Law Society, Member
- Federalist Society, Member
- Student Animal Legal Defense Fund, Member
- First Generation Lawyer's Association, Member

University of Colorado at Colorado Springs Colorado Springs, CO
Bachelor of Science, *magna cum laude*, in Marketing, May 2021

- GPA: 3.71
- Honors: National Society of Leadership and Success; Dean's List; President's List
- Pre-Law Society

EXPERIENCE

Fidelity National Title Insurance Omaha, NE
In-House Counsel Summer Clerk, May-July 2023

- Completed research projects to assist assigning attorneys with coverage claims
- Made coverage determinations on live claims from title insurance customers

Chief Judge L. Scott Coogler, Northern District of Alabama Tuscaloosa, AL
Law Clerk, July-August 2022

- Observed courtroom proceedings
- Drafted opinion on a motion to compel arbitration

Randall-Reilly Tuscaloosa, AL
In-House Counsel Summer Extern, May-July 2022

- Reviewed contracts with independent contractors, sales vendors, and customers
- Researched and drafted memoranda on emerging contract law issues
- Submitted recommendations to counsel and customers under attorney's supervision

COMMUNITY SERVICE

Natrona County High school, Volunteer Speech and Debate Judge
Beagle Freedom Project, Volunteer
Tuscaloosa Metro Animal Shelter, Volunteer
Habitat for Humanity Wills Clinic, Volunteer

ADDITIONAL INTERESTS

Ballroom dancing, volunteering with animals, traveling to national parks

12175716 Victoria Jones
Jun 10, 2023 07:04 pm

Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Institution Credit Transcript Totals Courses in Progress

Transcript Data

STUDENT INFORMATION

Name : Victoria Jones

Curriculum Information

Current Program:
Juris Doctor
College: Law School
Major and Department: Law, Law

This is NOT an Official Transcript

INSTITUTION CREDIT -Top-

Term: Fall 2021
Major: Law
Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	602	LW	Torts	B+	4.000	13.320	
LAW	603	LW	Criminal Law	A-	4.000	14.680	
LAW	608	LW	Civil Procedure	B+	4.000	13.320	
LAW	610	LW	Legal Research/Writing	B-	2.000	5.340	
LAW	713	LW	Intro to Study of Law	P	1.000	0.000	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	46.660	3.333
Cumulative:	15.000	15.000	15.000	14.000	46.660	3.333

Term: Spring 2022
Major: Law
Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	600	LW	Contracts	B-	4.000	10.680	
LAW	601	LW	Property	B	4.000	12.000	
LAW	609	LW	Constitutional Law	A-	4.000	14.680	
LAW	648	LW	Legal Research/Writing II	B	2.000	6.000	
LAW	742	LW	Legislation and Regulation	B-	2.000	5.340	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	48.700	3.044
Cumulative:	31.000	31.000	31.000	30.000	95.360	3.179

Term: Summer 2022

Major: Law
Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	634	LW	Externship	P	6.000	0.000	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	6.000	6.000	6.000	0.000	0.000	0.000
Cumulative:	37.000	37.000	37.000	30.000	95.360	3.179

Term: Fall 2022

Major: Law
Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	644	LW	Decedents Estates Trusts Plan	A-	3.000	11.010	
LAW	662	LW	Secured Transactions	B	3.000	9.000	
LAW	724	LW	Banking Law	A	3.000	12.000	
LAW	727	LW	Bankruptcy	B+	3.000	9.990	
LAW	776	LW	Sales Law	A	2.000	8.000	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	14.000	50.000	3.571
Cumulative:	51.000	51.000	51.000	44.000	145.360	3.304

Term: Spring 2023

Major: Law
Academic Standing: Standing Undetermined

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	645	LW	Business Organizations	P	3.000	0.000	
LAW	683	LW	Administrative Law	B	3.000	9.000	
LAW	684	LW	Antitrust Law	B+	3.000	9.990	
LAW	735	LW	Criml Procedure Pretrial	B+	3.000	9.990	
LAW	818	LW	Advanced Contracts Seminar	A-	2.000	7.340	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	11.000	36.320	3.302
Cumulative:	65.000	65.000	65.000	55.000	181.680	3.303

TRANSCRIPT TOTALS (LAW) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	65.000	65.000	65.000	55.000	181.680	3.303
Total Transfer:	0.000	0.000	0.000	0.000	0.000	0.000
Overall:	65.000	65.000	65.000	55.000	181.680	3.303

COURSES IN PROGRESS **-Top-**

Term: Fall 2023

Major: Law

Subject	Course	Level	Title	Credit Hours
LAW	642	LW	Evidence	3.000
LAW	660	LW	Legal Profession	3.000
LAW	674	LW	Family Law I	3.000
LAW	741	LW	Federal Government Contracts	3.000

RELEASE: 8.7.1

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Victoria Jones for a clerkship in your chambers. Victoria was one of the best students in my Criminal Law class during her first year of law school. Victoria received an A- in the Criminal Law course—quite an accomplishment in a class with a 3.2 grading mean. Every time I have called on her in either of my classes, Victoria has been incredibly well prepared. She had seemingly thought through all the material and each question that I might pose. Victoria also wrote an excellent exam in my Criminal Law class that was substantively thorough and clearly written and organized. She is particularly good at carefully analyzing each piece of a statute—a skill that I saw on display both in the classroom and in her final exam.

My Criminal Law course focuses heavily on statutory interpretation and analysis, so I feel comfortable saying that Victoria's ability to interpret a statute and work carefully through complex legal analysis exceeds that of most of the students I have taught in a decade of teaching. Unlike in most first-year courses, my Criminal Law students rarely read judicial opinions. They instead read extensive fact patterns and numerous statutes. We then spend most of our class time parsing statutes and determining whether the government could satisfy its burden of proof on every element of each statute. Victoria was always incredibly well prepared for class. When I called on her, it was clear that Victoria had already worked carefully and methodically through each of the statutes and had considered in detail how each of the specific facts might support or undermine potential charges. Her answers were succinct yet comprehensive.

Victoria did an excellent job on the final exam in my Criminal Law class. Among the many strengths of her exam, her careful parsing of the statutory text particularly stands out. Because I agree with the criticism that Justice Scalia levied about the first-year law school curriculum being too grounded in common law and not enough in statutes, I teach a course and give an exam that is deeply grounded in statutes. I provide numerous statutes that can apply to each question, and students must work through them in detail.

One particularly impressive piece of Victoria's statutory analysis arose on the homicide question where I gave students a felony murder rule statute that included examples of inherently dangerous felonies followed by a residual clause. Many students ignored the examples of those inherently dangerous felonies. By contrast, Victoria's answer deployed the ejusdem generis canon quite effectively. She recognized that theft and rape committed by force or threat of force both involve force or threat of force applied directly to someone's person. She then explained that transporting drugs—the charge at issue in the exam fact pattern—does not involve similar force or threat of force applied directly to someone's person. It thus could not be a predicate felony within the meaning of that statute. Few students handled that statutory provision well, which is why Victoria's clear analysis stood out so much. Nonetheless, I was not surprised to see Victoria handle those statutes so well. She was similarly careful and effective at breaking down statutes and applying the facts when I called on her in class.

The first question of my final exam last Fall involved a minor in possession of a short-barreled rifle, and it required a lot of careful work with the specific language of various statutes to reach that conclusion. Victoria had one of the very highest scores on that question. To begin with, she recognized that I had used statutory language that made the length of the firearm a strict liability element; she quoted that statutory language to prove that point in her response. My students had not seen many strict liability elements all semester, but Victoria handled the strict liability language easily and persuasively. The relevant statute also used two different types of measurements that could make a gun short barreled—the length from bolt face to muzzle or the total length. There too, Victoria handled that statutory structure with ease despite the time pressure. She recognized that the two methods for measuring the rifle were separated by an "or," and she even emphasized the word "or" in her exam answer.

In addition to the strong substance of Victoria's final exam, her answer was extremely easy to read and grade because it was very well organized and clearly written. Under the time pressure of an exam, many students do not deliver very clear or organized work product, especially in the Fall of their first year of law school. Victoria's exam used headings and subheadings throughout to clearly separate each issue that she addressed. She used paragraph structure very effectively, ensuring that each paragraph addressed only a single point. Within that very clear framework, Victoria's writing was itself quite straightforward, clear, and concise. She very effectively triaged the numerous issues on the exam—dedicating most of her time to the closest questions and resolving the easy ones sometimes as quickly as in a single clear sentence. In so doing, Victoria showed excellent judgment and ability to sift through numerous arguments—a skill that I found quite important when I was a law clerk.

Victoria cares about precision in language—a theme that runs through her success in my class, her interest in contract work and contract law, and her interest in numerous statutory and business law courses in the law school curriculum. Victoria's favorite class during her first year of law school was Contracts; she likes the idea that effective contract drafting requires writing clearly enough that even non-lawyers can understand and comply with the language. I was very excited to learn that Victoria spent part of last summer working in-house doing contract review and researching contract law issues because that work builds so wonderfully on her interests and her skills. I am excited about the careful attention to language and organization that Victoria will bring to a clerkship and to the practice of law.

Victoria has been and continues to be a wonderful member of our law school community and our surrounding community. She

Russell Gold - rgold@ua.edu - 205-348-1139

has been active in several student organizations, and she volunteers at a local animal shelter.

It was a pleasure to have Victoria Jones in my class, and I am delighted to have this opportunity to recommend her. She will make an excellent law clerk. Victoria is a clear analytical thinker and writer; she is also an extremely nice and engaging person who is a pleasure to talk with. If I can provide you with any additional information, please feel free to contact me at 205-348-1139 or rgold@law.ua.edu.

Very truly yours,

Russell M. Gold
Associate Professor of Law
University of Alabama School of Law

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am happy to recommend Victoria Jones for a judicial clerkship. Victoria was a strong student in my Civil Procedure class in the fall 2021 semester, when I taught at the University of Alabama School of Law. I am also impressed by Victoria's engagement with the Alabama Law community, as illustrated by her involvement with several organizations, such as the Journal of the Legal Profession and as the Secretary of If/When/How. I believe that Victoria will make a fine law clerk, and I highly recommend her.

Victoria's exam in Civil Procedure demonstrates her analytic ability. She did a terrific job with issues of personal jurisdiction and the plausibility pleading standard from Bell Atlantic Corp. v. Twombly (2007) and Ashcroft v. Iqbal (2009). Although Victoria did not perform as well on the exam as I might have expected (she earned a B+), I feel confident that she has a strong understanding of the law of jurisdiction and procedure.

Victoria further showed her legal skills and fascination with the law through her engagement in and outside of class. During the fall 2021 semester, law schools continued to deal with the effects of the COVID-19 pandemic, and students were required to wear masks much of the fall semester. But Victoria did a great job participating even in this complex environment. In class, I use a Socratic method of teaching; I call on students at random (an approach I continued to use in this new teaching environment). Victoria was consistently ready to answer questions. She was also a frequent participant during office hours. We had many terrific conversations—about topics ranging from the Erie doctrine and res judicata to more general questions about the Supreme Court's approach to statutory interpretation. Victoria was particularly curious about the Court's increasing interest in textualism. Her fascination with the law will undoubtedly make her a strong addition to any judicial chambers.

If I can be of any more assistance, please do not hesitate to contact me, either by phone (w: 512-232-1363; c: 703-786-9731) or email (tgrove@law.utexas.edu). I wish you the best of luck with your selection process.

Sincerely,

Tara Leigh Grove
Vinson & Elkins Chair in Law
University of Texas School of Law

VICTORIA JONES

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WRITING SAMPLE

The attached writing sample is the Seminar Paper I prepared for an Advanced Contracts Seminar in Spring of 2023. For my paper, I chose to conduct empirical research into mandatory arbitration, particularly its use in work contracts with low-wage employees. I was interested to see what people's understanding of arbitration was. This work has been reviewed by my seminar professor.

EMPLOYEE KNOWLEDGE OF ARBITRATION: AN EMPIRICAL ANALYSIS

Victoria Jones

Part I: Introduction

Modern contract law has come a long way from bartering in the town square over how many pieces of cheese your chicken was worth. Heated negotiations back and forth between two parties have largely been replaced in modern society by contracts of adhesion – that is, an agreement drafted by one party (or their legal team) and presented to the other on a take-it-or-leave-it basis.[1] Parties no longer negotiate terms or attempt to reach a common understanding about the contract. Rather, they usually check a box or click a button and become bound to a set of terms they almost certainly did not read.[2]

Currently, courts widely enforce contracts of adhesion, no matter how one-sided their terms appear to be.[3] They expect consumers and employees to have read the terms of any contract they signed or agreed to; if they cannot read, courts expect that the consumer or employee will have someone read the terms to them.[4] This is called the duty to read.[5] While contracts of adhesion have given rise to the duty to read, it has been argued that even if the average person did read the terms of the contracts, they would either not be able to understand the terms or they would not fully comprehend the consequences of certain provisions.[6]

Criticisms of the duty to read have abounded in legal scholarship, but this paper is concerned with a narrow issue regarding one specific and common provision within adhesive contracts: mandatory arbitration in employment contracts.

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[1] 1 Corbin on Contracts Desk Edition § 24.18 (2021).
[2] *Id.*
[3] *Id.*
[4] Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable*, 60 B.C. L. REV. 2255 (2019).
[5] *Id.*
[6] *Id.*

Arbitration has become a preferred method of dispute resolution in the United States.[7] Proponents of arbitration claim it is faster, cheaper, and less cumbersome than traditional litigation.[8] They champion arbitration as the solution to a broken judicial system for people who may not otherwise have the ability to pursue meritorious claims.[9] In theory, there were many benefits to arbitration that would make it more accessible than litigation. It is true that litigation poses many barriers to average American people.[10] However, in practice, arbitration has made bringing claims even more challenging. Some of its perceived benefits cut against unsophisticated parties, such as low-wage employees. With the widespread use of adhesive contracts that often include arbitration provisions and the enthusiastic support of the courts in enforcing them, mandatory arbitration has become increasingly prevalent.

This paper will examine how much people actually know about the costs and benefits of arbitration. Specifically, I am interested to see if people understand what rights and privileges they are giving up when they consent to be subject to an arbitration provision. Going into the study, I hypothesized that even if people did read the terms they were subject to, they would not be aware of the effects arbitration has on the outcomes of cases.

Part II of this paper will examine a brief history of arbitration and discuss key statutes and cases that support its use and enforcement. This leads us to Part III, which explains the central issue of the paper: the disparity between the expected benefits of mandatory arbitration and the reality of how oppressive it is in practice. To research employee understanding of this issue, a survey was drafted on Qualtrics and distributed through Positly. The methodology used

[7] Katherine Stone & Alexander Colvin, *The Arbitration Epidemic*, ECONOMIC POLICY INSTITUTE, December 7, 2015, at 10.
[8] *Id.* at 3.
[9] *Id.*
[10] *Id.* at 3, 4.

and analysis of the results is discussed in Part IV. The survey was designed to test users' general knowledge of arbitration, their perceptions of the effects of arbitration, and understanding of their rights when they were subject to an arbitration clause.

Part II: Background

In order to understand how we arrived at broad use of arbitration and enforcement of mandatory arbitration agreements, it is important to observe how arbitration has developed in the United States and the role it plays in dispute resolution today. The federal statute governing arbitration agreements is the Federal Arbitration Act, which is discussed below. We will then look at two groundbreaking cases that drastically affected the use and enforcement of arbitration clauses in contracts of adhesion: *Concepcion* and *Epic Systems*.

A. The Federal Arbitration Act

Prior to 1925, courts generally disfavored arbitration as a means to settle disputes; it was sometimes recognized, but not preferred.[11] Arbitrators' authority was limited to specific issues, such as bankruptcy or admiralty law, and courts could (and did) freely choose not to bind parties to an agreement to arbitrate.[12] Due to mounting judicial hostility towards arbitration, Congress enacted the Federal Arbitration Act (FAA) in 1925.[13]

The FAA was designed to ensure that courts enforced arbitration agreements the same as other contracts. Congress required courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures. Importantly, Congress directed courts to treat arbitration agreements as "valid, irrevocable, and

[11] Hall Street Associates, L.L.C. v. Mattel, Inc., 552 U.S. 576 (2008).
[12] DANIEL CENTNER AND MEGAN FORD, A BRIEF PRIMER ON THE HISTORY OF ARBITRATION, 2006.
[13] 9 U.S.C.S. § 2.

enforceable." This was meant to place arbitration agreements on the same footing as other contracts and ensure they were enforced against parties.

Over time, as the jurisprudence developed, it became clear that arbitrators had much more power than before. Federal courts were encouraged to interpret the FAA liberally, which resulted in arbitrators getting broad authority. For example, arbitrators could determine the validity of contracts at issue that had arbitration clauses. They could also determine whether a dispute fell within their jurisdiction to arbitrate in the first place. States did attempt to curb the reach of the FAA with their own legislation and courts, but these efforts were repeatedly struck down. Since laws that attempted to limit the scope of the FAA were held to be unenforceable, the use of arbitration became progressively more prevalent.

B. Concepcion:

Prior to the *Concepcion* case, state courts could refuse to enforce arbitration provisions if they felt that doing so was unconscionable.[14] In weighing a decision, courts could look to a number of factors, such as the bargaining power of the parties, the amount of individual versus aggregate claims, and whether the result of enforcing the arbitration agreement was overly harsh or one-sided.[15] If the court found that the overall result of the balancing test was that enforcing the arbitration agreement was unconscionable, it could simply refuse to hold the parties to the agreement and allow the claims to proceed in the judicial system.[16]

It is important to note that prior to *Concepcion*, this concept was the law in California (where the case originated). The state had enacted the Discover Bank Rule, which stated that class action waivers in consumer contracts of adhesion were unconscionable in cases where a

[14] Discover Bank v. Superior Court, 36 Cal. 4th 148, 153 (2005).
[15] AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011).
[16] *Discover Bank*, 36 Cal. 4th at 153.

party with superior bargaining power was alleged to have cheated large numbers of consumers out of individually small sums of money.[17] The state of California also reserved the ability to refuse to enforce any arbitration agreement or class action waiver if the court found that public policy weighed against upholding the agreement.[18] In fact, the FAA was subject to similar unconscionability standards in other states.[19]

The lower courts ruled in favor of the plaintiffs.[20] They found that the FAA did not preempt the Discover Bank Rule because all contracts were subject to review for unconscionability; the rule was merely a refinement of this standard, so arbitration agreements were treated the same way as other contracts.[21] Importantly, the FAA itself has a savings clause that states arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[22] Many state courts believed (and federal appellate courts agreed) that the savings clause allowed the FAA and state unconscionability doctrines to coexist without preemption issues.[23]

However, the Supreme Court disagreed with this interpretation. In a decision written by Justice Scalia, the Court said the FAA had clear and simple objectives; to ensure that agreements to arbitrate were respected and enforced by the courts.[24] The savings clause, Justice Scalia wrote, did not attempt to preserve states' rights to interfere with these objectives.[25] In overruling the decision of the California state courts, the Supreme Court essentially held that the FAA superseded state laws that would allow arbitration clauses to be avoided by parties if they were

[17] *Id.* at 156.
[18] *Id.*
[19] *See* 42 Pa.C.S. § 7303.
[20] *Concepcion*, 563 U.S. at 338.
[21] Laster v. AT&T Mobility LLC, 584 F.3d 849, 854 (2009).
[22] 9 U.S.C.S. § 2.
[23] *Concepcion*, 563 U.S. at 338.
[24] *Id.* at 344.
[25] *Id.*

unconscionable. The FAA's strong policy in favor of arbitration outweighed the state's interest in protecting consumers from unfair arbitration clauses.

After this case, states were no longer allowed to refuse to enforce arbitration agreements, no matter how unconscionable the agreements were. This has made it much more difficult for consumers to bring class action lawsuits against businesses. While the *Concepcion* case was controversial when it was decided, it has had a significant impact on the law surrounding arbitration. It is a clear example of the Supreme Court's commitment to enforcing the FAA's strong policy in favor of arbitration.

C. Epic Systems:

In the *Epic Systems* case, the court considered the issue of whether the National Labor Relations Act (NLRA) prevented arbitration agreements from precluding class actions in employment cases.[26] The NLRA protects workers' rights to engage in collective action, including the right to unionize and the right to engage in concerted activity for mutual aid or protection.[27] In this case, three employees attempted to sue their employers in class actions after their employers denied them overtime wages. All three employers had required their employees, including the plaintiffs, to sign arbitration agreements that required them to individually arbitrate any claims against the employer; class actions were prohibited.[28] In court, the plaintiffs argued that the NLRA prohibited class action waivers, so the contracts were not enforceable.[29]

However, the court disagreed. It held that if employees signed an arbitration agreement with an employer, they were required to submit claims to arbitration and could not sue in

[26] Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1619 (2018).
[27] 29 U.S.C.S. § 151.
[28] *Epic Systems*, 138 S. Ct. at 1619, 1620.
[29] *Id.* at 1620.

courts.[30] The arbitration agreements would be upheld even if the employer required the employee to sign the agreement as part of their employment, as the plaintiffs in *Epic Systems* had. The Court thus held that arbitration agreements between employers and employees that require claims to be brought on an individual basis do not violate the NLRA because the NLRA does not specifically mention class actions or express disapproval of arbitration as a dispute resolution method for employment cases.[31] The Court further held that the FAA requires courts to enforce such agreements as they are written. Thus, litigants in federal court were similarly left with no way to get out of an arbitration agreement. This case also extended the reach of mandatory arbitration to employees, not just consumers.

The impact of this case on workers' rights has been significant. It has made it more difficult for workers to hold their employers accountable for wage and hour violations, discrimination, and other workplace violations. It has also made it more difficult for workers to join together to negotiate better working conditions, wages, and benefits. The decision has also led to criticism that it favors employers over employees and may lead to a reduction in workers' bargaining power. The *Epic Systems* opinion itself, authored by Justice Gorsuch, alludes to the controversy: "The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written… Because we can easily read Congress's statutes to work in harmony, that is where our duty lies."[32]

The outcomes of the *Concepcion* and *Epic Systems* cases, taken together, have serious implications for both employees and consumers. Such plaintiffs attempting to bring suit against either a company or their employer no longer have a legal remedy in either state or federal court

[30] *Id.* at 1622.
[31] *Id.*
[32] *Id.* at 1632.

if they sign an arbitration agreement or a contract containing an arbitration clause. When read against the backdrop of adhesion contracts and the duty to read, no arbitration clause will be overturned by courts. Thus, its practice and use by large companies has increased exponentially.

Part III: The Issue

Perhaps mandatory arbitration could be tolerated if it delivered on its promise to make legal remedies more available to people who lack access to the judicial system. However, many empirical studies have demonstrated that this is not the case.

A. Problems With Arbitration:

Over time, with the more widespread use of arbitration as a means of resolving disputes, a few major problems have emerged.

One issue arising from arbitration is the closed record. Arbitration proceedings are entirely private, meaning the facts and witnesses the arbitrator considered in making their decision are not disclosed to the public. When arbitration first came to forefront of American dispute resolution, this was seen as one of its strengths. Now, it is more commonly viewed as a flaw. Because arbitration disputes are settled off the public record, arbitrators do not have established precedent to ensure consistent outcomes. It also allows employers and businesses to keep claims against them from being made public.

Further, most (if not all) arbitration agreements preclude class actions.[33] This means that plaintiffs with individually small claims cannot aggregate their claims into a collective action against a common defendant. Without class actions as a remedy, many consumers and employees with individually small claims would find bringing any action inefficient. The average wage theft

[33] Katherine Stone & Alexander Colvin, *The Arbitration Epidemic*, ECONOMIC POLICY INSTITUTE, December 7, 2015, at 11.

claim is $1,393.[34] This is almost a month's pay for the average retail cashier or housekeeper[35]; yet, it is significantly lower than the costs of arbitrating a claim, which can reach tens of thousands of dollars from start to finish.[36] Thus, while employees could bring claims in theory, a simple cost benefit analysis would likely discourage them from pursuing a claim, even if they felt it had merit.

The repeat player problem has also emerged as a growing issue in arbitration. This refers to an employer's ability to choose the arbitrator who will hear any claims brought against them. As a result of the desire to generate repeat business with the employer, the arbitrator will increasingly rule in favor of the employer and against the employee. One study shows that the first time an employer appeared before an arbitrator, the employee had a 17.9% chance of winning, but after the employer had four cases before the same arbitrator the employee's chance of winning dropped to 15.3 percent, and after 25 cases before the same arbitrator the employee's chance of winning dropped to only 4.5 percent.[37]

B. Arbitration versus Litigation:

First, while arbitration has been hailed as a low cost alternative to litigation, it may not be cost effective at all. In fact, arbitration usually carries far more required fees than state and federal courts. This means the overall costs associated with arbitrating claims are much higher than court fees. An initial filing fee in state small claims court ranges from $30-200[38]. Federal

[34] U.S. Department of Labor, Wage and Hour Division, *Data & Statistics*, https://www.dol.gov/agencies/whd/data#:~:text=WHD%20investigations%20in%20fiscal%20year,for%20three%20weeks%20of%20work (last visited Apr. 29, 2023).
[35] *Id.*
[36] Mark Fotohabadi, *How Much Does Arbitration Cost*, June 10, 2022, https://www.adrtimes.com/how-much-does-arbitration-cost/.
[37] Alexander J.S. Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*.
[38] STATE OF ALABAMA UNIFIED JUDICIAL SYSTEM: FEE DISTRIBUTION CHART (2015); *see also* NC JUDICIAL BRANCH: SMALL CLAIMS, https://www.nccourts.gov/help-topics/lawsuits-and-small-claims/small-claims (last visited April 29, 2023).

court filing fees are $350.[39] Courts have no other mandatory costs or fees, though the parties may incur costs related to litigating a case, such as travel and hiring legal counsel. In arbitration, initial filing fees are as low as $1,000 and can be as high as $4,300.[40] Parties in arbitration also pay additional fees for discovery and a hearing, which are usually in the hundreds of dollars, as well as ongoing administrative fees and the arbitrator's hourly fee, which can be as high as $375 an hour.[41] Some plaintiffs were also required to pay a $2,750 fee per day to have a hearing.[42] Additionally, most arbitration agreements contain fee-shifting provisions that may require the employee to cover certain costs or split them in half. Some fee-shifting provisions may impose all the costs of arbitration on the losing party (which is often the employee).

Damages awards in litigation are exponentially higher than those awarded employees in arbitration. A recent study shows a median of $36,500 in damages is awarded under arbitration, compared to $176,000 in federal courts and $86,000 in state courts.[43] Another study with a different arbitration servicer suggests an even higher disparity: The average (mean) amount of damages awarded to plaintiffs in employment cases is $23,548 in mandatory arbitration, $143,497 in federal court, and $328,008 in state court.[44]

Further, employees are far less likely to win in arbitration than they are in litigation. Employee win rates in mandatory arbitration win only about 21.4 percent of the time, 59 percent of the time in the federal courts, and 38 percent of the time in state courts.[45] As a result of the

[39] UNITED STATES COURTS: U.S. COURT OF FEDERAL CLAIMS FEE SCHEDULE (2020).
[40] Lucey v. FedEx Ground Package Sys., U.S. Dist. LEXIS 77454, at 6 (2007).
[41] *Id.*
[42] *Id.*
[43] Christopher Ingraham, *There's a little-known employment contract provision enabling billions of dollars in wage theft each year*, https://www.washingtonpost.com/business/2020/02/13/theres-little-known-employment-contract-provision-enabling-billions-dollars-wage-theft-each-year/, last accessed March 1 2023.
[44] Katherine Stone & Alexander Colvin, *The Arbitration Epidemic*, ECONOMIC POLICY INSTITUTE, December 7, 2015, at 20.
[45] *Id.*

low likelihood of success, over 98% of workers will abandon a claim against an employer rather than attempt to arbitrate the issue against them.[46] Only 2% of workers will actually proceed with a claim after they find out they are subject to an arbitration agreement.[47] This means that employers who violate the law are not held accountable to their employees or to society; they most often evade liability as well as any other significant consequences.

C. Effects on Worker's Rights

The increased costs of arbitration have not gone unnoticed by legal scholars, workers' rights groups, or consumer advocates. States are enacting laws to curb wage theft violations that could allow workers to bring suit on behalf of the state[48]. Recently, the US Department of Labor has also sought to prosecute claims for workers who are subject to mandatory arbitration to ensure the law is sufficiently enforced against employers engaging in illegal practices.[49]

However, little recourse outside arbitration is available for workers themselves. It is estimated that 65% of low wage employees (those making $13 or less an hour) are subject to mandatory arbitration clauses as well as 56% of all non-union private sector employees.[50] Overall, mandatory arbitration is estimated to affect over 60 million workers in the United States.[51] Should these workers become victims of wage theft, discrimination, or harassment, they would have no legal recourse besides arbitration, where they face almost certain defeat.

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[46] Christopher Ingraham, *There's a little-known employment contract provision enabling billions of dollars in wage theft each year*, https://www.washingtonpost.com/business/2020/02/13/theres-little-known-employment-contract-provision-enabling-billions-dollars-wage-theft-each-year/ (last visited April 29, 2023).
[47] *Id*.
[48] Chris Marr, *Wage Violations Targeted in Latest State Legislative Proposals*, BLOOMBERG LAW, June 28, 2022, https://news.bloomberglaw.com/daily-labor-report/wage-violations-targeted-in-latest-state-legislative-proposals.
[49] U.S. Dep't of Labor, *Mandatory Arbitration Won't Stop Us from Enforcing the Law*, (Mar. 20, 2023, 2:43 PM), https://blog.dol.gov/2023/03/20/mandatory-arbitration-wont-stop-us-from-enforcing-the-law#:~:text=And%20because%20many%20mandatory%20arbitration,now%20subject%20to%20mandatory%20arbitration.
[50] *Id*.
[51] *Id*.

It is estimated that wage theft costs US employees over $15 billion a year[52]. Most of this money will never be recovered and provided to the employees who earned it because the costs of bringing a claim outweighs the amount of the money they lost.

Further, there is evidence that the number of forced arbitration for both consumers and employees increased during the COVID-19 pandemic.[53] As the number of arbitrations went up, the employee win rates went down to only 5.3%.[54] From 2019 to 2020 alone, the number of forced arbitrations increased 17%.[55] While 60 million employees are currently subject to mandatory arbitration agreements, only 82 employees won cases in 2020.[56] Top corporate defendants in mandatory arbitration claims include Family Dollar, Chipotle, and Macy's.[57] While some companies have started to move away from mandatory arbitration agreements, other companies (including Tesla) embrace the practice now more than ever.[58]

Thus, we can see that the practice of mandatory arbitration in the workplace is stronger than ever and has grown in strength and scope since *Concepcion* and *Epic Systems*.

Part IV: Empirical Analysis

Traditionally, for contract terms to be enforceable, the parties should reach a "meeting of the minds," or generally know and understand what the terms of the contract are.[59] This school of doctrine has essentially been replaced by the duty to read, as courts hold that even a small indication of consent is sufficient to bind the parties.[60] However, I believe that even if people did

[52]Katie Lester, *Forced Arbitration Robs Workers Billions in Wages*, CENTER FOR PROGRESSIVE REFORM BLOG, February 4, 2021, https://progressivereform.org/cpr-blog/forced-arbitration-robs-workers-billions-wages/.
[53] American Association for Justice, *Forced Arbitration in a Pandemic: Corporations Double Down*, Oct 27, 2021, https://www.justice.org/resources/research/forced-arbitration-in-a-pandemic.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable*, 60 B.C. L. Rev. 2255 (2019).
[60] *Id.*

read the terms of adhesion contracts, they would probably be unaware of the legal consequences of certain provisions. While arbitration clauses can have drastic effects on one's legal rights post-*Concepcion* and *Epic Systems*, I suspected that most people were unaware of these effects, such as lower damages awards, decreased chances of winning, and higher required costs and fees.

This finding could be significant because it undermines the meaning of the duty to read; while the duty to read assumes that people are able and willing to read contractual terms, simply reading them would be pointless if one does not understand the legal effects of what they are agreeing to. The duty to read has been used as a proxy for consent; but how could one consent to terms they lack fundamental knowledge of. Alternatively, if people do understand what agreeing to arbitration means for their potential claims, it could indicate that perhaps arbitration is a smaller issue than scholars make it out to be. If people walk into arbitration agreements with full knowledge of it, they have knowingly and understandingly consented to be bound. While terms such as arbitration may be unfavorable to employees, they do have the right to enter into whatever contracts they choose.

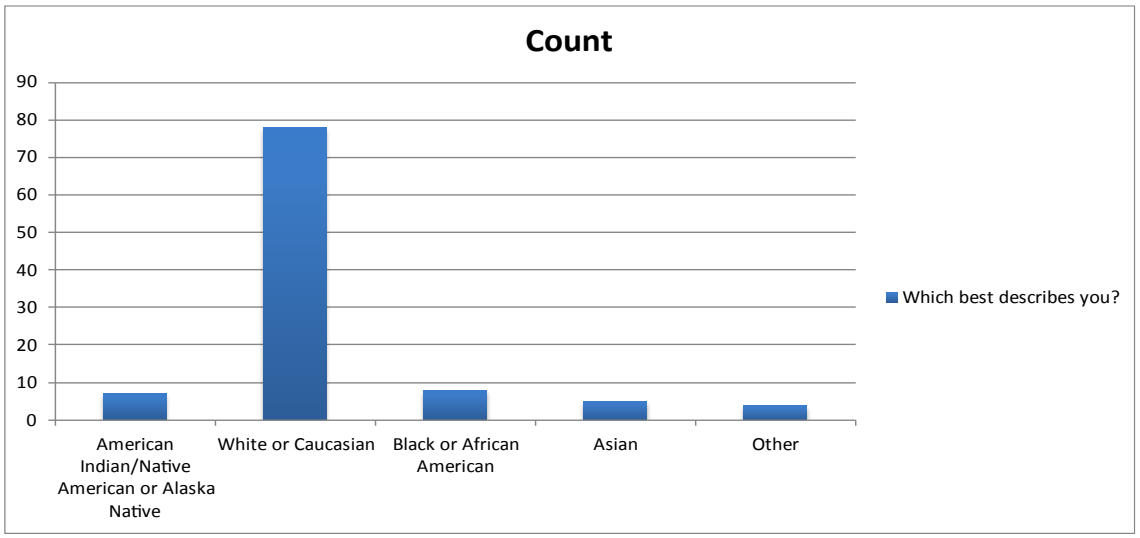
A. Methodology:

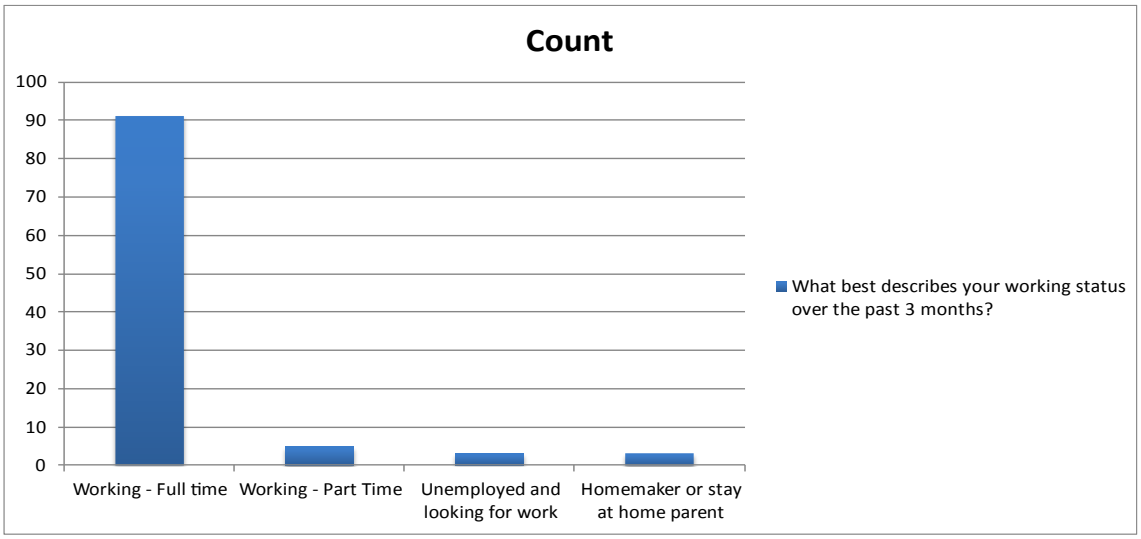
The purpose of the study was to determine if people understood the consequences of arbitration clauses and how such provisions affected their rights. There were two possible outcomes: one possibility was that people knew what agreeing to arbitration provisions meant, and they willingly accept these consequences when they signed contracts containing these clauses; the other possibility was that people did not fully understand the implications of agreeing to arbitration and thus enter into such agreements without knowing the consequences of doing so.

To conduct the research, I first wrote survey questions on Qualtrics. The survey had key questions about arbitration itself as well as questions where the respondents compared arbitration directly to litigation. The survey was then published on Positly. From Positly, people who agreed to participate in the study were rerouted to the Qualtrics page, where they completed the survey. Qualtrics collected all the answers and organized the data into reportable results.

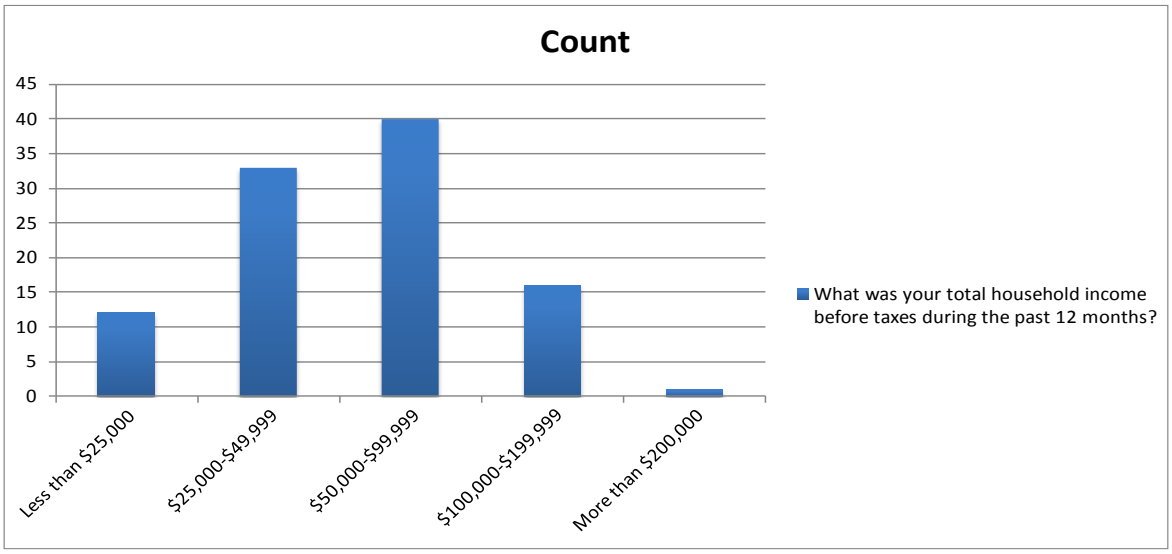
B. Results:

We recruited a total of 89 respondents to respond to the survey. While this is a small sample size, the findings demonstrate important issues regarding employees' understanding of arbitration. In terms of demographics, many survey respondents (53%) had a bachelor's degree or above. 89% of the respondents were working full-time. The respondents were skewed Caucasian (76.5%, compared with the 57% national average). Additionally, the respondents were 57.8% male and 42.2% female.

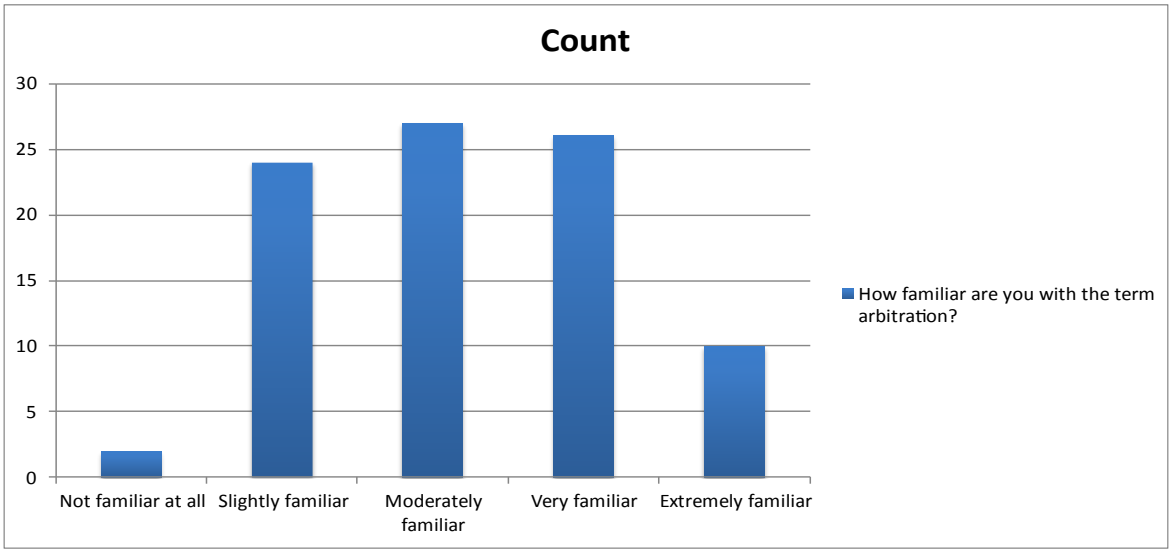




Additionally, the respondents mostly had average or below average income, with 83.4% reporting income under $100,000. Mandatory arbitration affects millions of workers who largely lack the resources to challenge their employment contracts or raise a claim against an employer in arbitration. It is also very likely that our respondents are either currently subject to arbitration agreements under their current employers or have been subject to mandatory arbitration in the past. The responses they provided are therefore very valuable; we had the opportunity to learn from employees affected by arbitration agreements themselves.



We asked the respondents how familiar they were with the term arbitration. We also asked the respondents to describe what they thought arbitration was in their own words. For the most part, the respondents seemed confident in their own knowledge of arbitration, with most of them (97.8%) indicating some level of familiarity with the term.



Answers to the free-response questions indicate the respondents also seemed to generally understand what arbitration was. For example, one respondent wrote: "Arbitration resolves disputes outside the judiciary courts." Another wrote: "Using a 3rd party to settle a dispute." Another replied: "Settling a dispute by an independent third party." While these are only a few examples, the responses taken as a whole showed that in general, people are aware of the fundamentals function of arbitration. The descriptions are also neutral; no one indicated a strong preference either for or against arbitration.

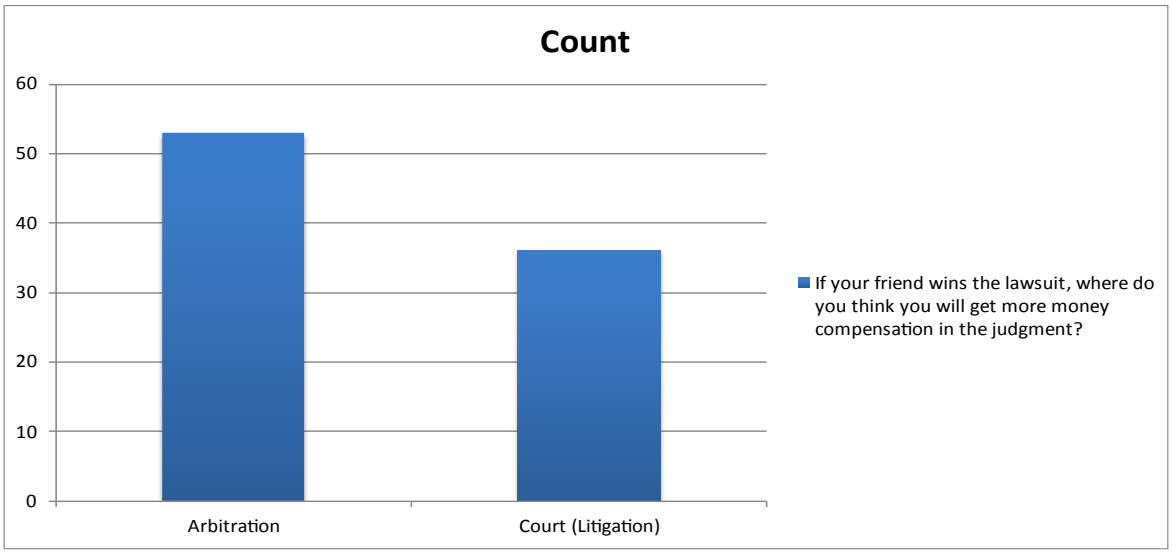
However, in another free response question, when presented with an arbitration clause and asked to explain what it meant, the respondents fell short of accuracy. This means they may lack a basic knowledge of what the language was conveying. The arbitration provision read:

"Any controversy or claim arising out of or relating to this Agreement or the parties' dealings shall be settled by arbitration in the City of New York, NY, in accordance with the then-governing rules of the American Arbitration Association. If such organization ceases to exist, the arbitration shall be conducted by its successor, or by a similar arbitration organization, at the time a demand for arbitration is made. The decision of the arbitrator shall be final and binding on both parties. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction."

One respondent said: "If you have an issue, you need to engage in arbitration with the company or it's [sic] successor in NYC to come to a binding outcome." Another wrote: "If a disagreement happens between the two parties then the issue will be settled outside of court (arbitration) by the arbitration organization listed." However, many respondents wrote "n/a" or

"nothing," suggesting they either could not read or did not understand the arbitration provision. It could also mean they didn't read the provision closely enough to extract its meaning.

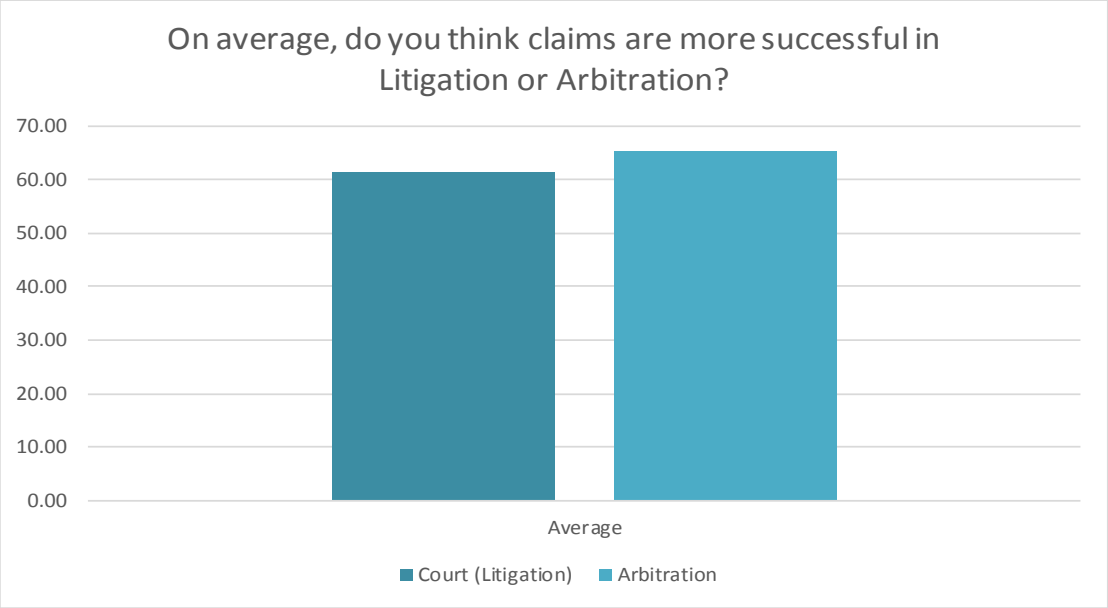
Further, when asked specific questions about arbitration, the respondents seemed to collectively stumble. First, the respondents believed that arbitration would result in higher money damages being awarded to a successful claim. They were presented with a hypothetical situation regarding a friend who is subject to an arbitration agreement, and then asked where they believed the friend would win the most money.



The respondents also thought claims fared slightly better in arbitration than in traditional litigation. On average, the respondents believed court cases were successful for plaintiffs in wage theft claims 61% of the time in litigation and 65% of the time in arbitration. This can be compared to actual win rates: plaintiffs succeed in wage theft claims in federal court 59% of the time[61] and only 5.3% of the time in arbitration.[62] While the respondents were fairly accurate in

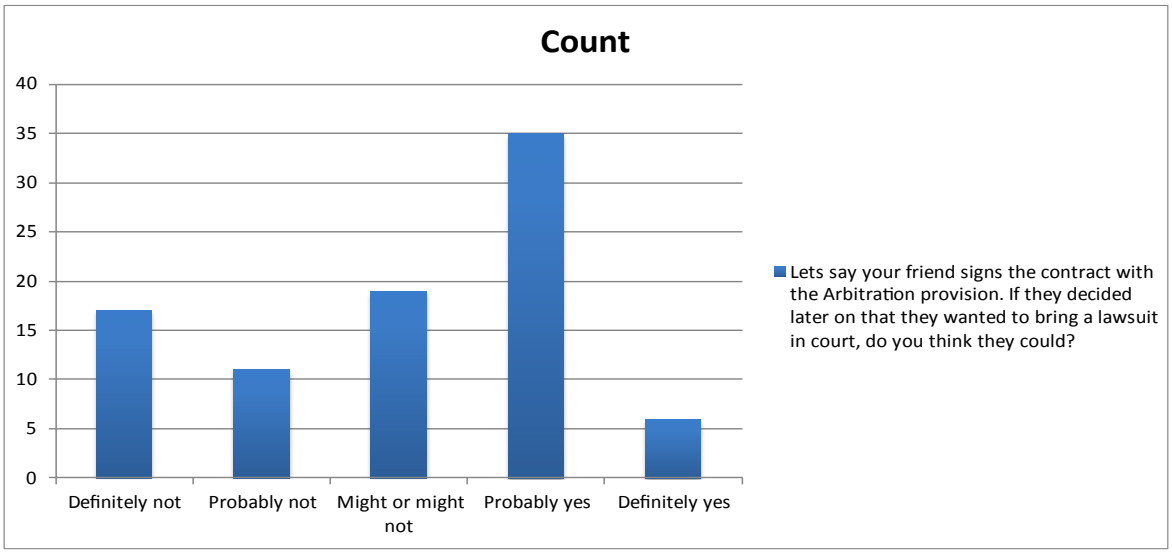
[61] Katherine Stone & Alexander Colvin, *The Arbitration Epidemic*, ECONOMIC POLICY INSTITUTE, December 7, 2015, at 20.
[62] American Association for Justice, *Forced Arbitration in a Pandemic: Corporations Double Down*, Oct 27, 2021, https://www.justice.org/resources/research/forced-arbitration-in-a-pandemic.

predicting their likelihood of success in litigation, they drastically missed the mark on arbitration. Perhaps more importantly, they believed as a whole that their chances were better in arbitration, while this has been shown to not be the case.



One of the more surprising results was that the respondents did not seem to realize that arbitration clauses foreclosed the possibility of bringing a lawsuit in court. When asked if they believed whether or not they could bring a lawsuit in court while subject to an arbitration agreement, most of the respondents indicated they thought they could, with the most common answer being "probably yes." As we have observed from the case law, this is inaccurate. The Supreme Court has held that the FAA mandates arbitration if the parties agreed to it.[63] This was a rather troubling discovery, as it is completely incorrect given current precedent.

[63] *Epic Systems*, 138 S. Ct. at 1632.



C. Analysis

The study shows that most people have significant misconceptions about the costs and benefits of arbitration as an alternative dispute resolution method. While this was a smaller study, and the findings are not technically statistically significant, they do raise several red flags. They support the second possibility identified earlier: that people don't fully understand the implications of agreeing to arbitration and thus enter into such agreements without knowing the consequences. As a whole, the results demonstrate that people's beliefs about the consequences of arbitration clauses are out of line with reality.

Overall, the respondents seemed to think that arbitration was generally more employee-friendly than traditional litigation. This stands in stark contrast with the common criticism of arbitration being exceedingly corporate-friendly. The respondents as a group were incorrect about the required costs of arbitration relative to litigation, how likely plaintiffs are to win claims, and the amount of damages they could expect to recover if they brought a successful claim for wage theft. Perhaps most importantly, they did not believe that an arbitration clause

precluded them from bringing a lawsuit in court. The expectation of litigation being an available remedy even with the presence of an arbitration provision speaks volumes. This shows a deep misunderstanding of the goals of arbitration provisions and the policies promulgated by the FAA (and supported by the Supreme Court) itself.

I think the results show a disconnect between what people think about arbitration and what arbitration does in practice. They indicate that people are not nearly as wary of arbitration as they should be. As long as these perceptions continue, large companies can continue to use this dispute resolution method to avoid accountability for violating the law while people remain oblivious – that is, until or unless they are faced with bringing a claim.

I would argue that this lack of basic understanding of arbitration weighs strongly in favor of returning to an unconscionability standard for arbitration agreements, or at least subjecting them to some level of judicial scrutiny. This issue goes beyond the duty to read. While the duty to read requires several assumptions about one's ability and willingness to read the terms of a contract, the results from this study suggest that reading the contract would do little to no good. The respondents here were confident in their understanding of arbitration, yet they were mistaken about the real implications of such an agreement. Had they been presented with the arbitration provision in the survey, they would have readily agreed to the terms with the full belief that they were likely better off pursuing claims in arbitration and not in court. This raises the issue of whether the parties have truly consented to be bound by such unfavorable terms, or whether they rather just didn't have the bargaining power to dispute the terms at the outset of the contract formation. This is exactly what the Discover Bank rule sought to prevent.[64]

[64] *Discover Bank*, 36 Cal. 4th at 153.

Also, the Court in Epic Systems said that Congress was free to amend the NLRA at any time to preclude class action waivers.[65] In light of the increased amount of wage theft that has occurred in the years since *Epic Systems*, I think the legislature should amend the statute accordingly. Individual claims are unlikely to succeed and are not cost effective; employees need the remedy of collective action if they are to successfully hold their employers accountable for breaking the law.

This survey strongly indicates that parties who agree to be bound by arbitration agreements have several key misconceptions about arbitration. While the courts have declined to offer judicial remedies, I would recommend as a matter of policy that companies begin to settle claims outside of arbitration, at least for small claims (i.e. anything less than $10,000). Some companies have bowed to social pressure regarding harassment claims, and others have moved away from forced arbitration entirely.[66] If the country is going to try to meaningfully combat wage theft, employees themselves need to be empowered to seek legal action themselves in small claims court. Small claims are governed by states and generally require low filing fees.[67] Claims are also typically straightforward enough to not require hiring legal counsel.[68]

Further, while states have traditionally been prevented from countering the FAA, I think their own legislation for combating wage theft should be honored if any come to fruition. Should states themselves take action against corporations, corporate defendants would be less able to avoid liability. Some examples of proposed state remedies include allowing employees to sue

[65] *Epic Systems*, 138 S. Ct. at 1630.
[66] American Association for Justice, *Forced Arbitration in a Pandemic: Corporations Double Down*, Oct 27, 2021, https://www.justice.org/resources/research/forced-arbitration-in-a-pandemic.
[67] NC JUDICIAL BRANCH: SMALL CLAIMS, https://www.nccourts.gov/help-topics/lawsuits-and-small-claims/small-claims (last visited April 29, 2023).
[68] *Id.*

employers on behalf of the state and empowering state labor boards to pursue prosecution and increased damages for companies that violate wage theft laws.[69]

Part V: Conclusion

While the court has held that the law regarding mandatory arbitration is clear, they conceded that the policy debate was far from over.[70] Moving forward, this research should help inform policy decisions that could enable smaller parties to hold their employers accountable for wage theft violations. Not only is there a massive problem concerning wage theft that affects thousands of workers a year, there are inadequate judicial remedies to help employees enforce their rights. The research conducted here shows that employees lack the knowledge to contest arbitration provisions themselves; they lack basic knowledge of the consequences of agreements to arbitrate claims. Situations such as this call for legal action, either from courts or legislators. In the future, courts must support any effort to combat the wage theft issue.

[69] Chris Marr, *Wage Violations Targeted in Latest State Legislative Proposals*, BLOOMBERG LAW, June 28, 2022, https://news.bloomberglaw.com/daily-labor-report/wage-violations-targeted-in-latest-state-legislative-proposals.
[70] *Epic Systems*, 138 S. Ct. at 1632.

Applicant Details

First Name	**Brianna**
Last Name	**Jordan**
Citizenship Status	**U. S. Citizen**
Email Address	**bjordan@bu.edu**
Address	**Address** **Street** **357 Faneuil St., Apt. 12A** **City** **Brighton** **State/Territory** **Massachusetts** **Zip** **02135** **Country** **United States**
Contact Phone Number	**630-631-6266**

Applicant Education

BA/BS From	**University of Illinois-Urbana-Champaign**
Date of BA/BS	**May 2021**
JD/LLB From	**Boston University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12202&yr=2009**
Date of JD/LLB	**May 20, 2024**
Class Rank	**Not yet ranked**
Law Review/ Journal	**Yes**
Journal(s)	**Journal of Science and Technology Law**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Esdaile Moot Court Program**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gonzales Rose, Jasmine
jgrose@bu.edu
617-358-6187
Feingold, Jonathan
jfeingol@bu.edu
617-353-5793
D'Amato, Laura
ledamato@bu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Brianna Jordan
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357 Faneuil St., Apt. 12A, Brighton, MA 02135

June 11, 2023

The Honorable Jamar Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at Boston University School of Law, and I am thrilled to be applying for a clerkship in your chambers for the 2024-2025 term. As a person who also values identifying how race and the law intersect, I am very excited to apply for this opportunity. Specifically, your involvement in the Committee on Race, Policing, and Prosecution is inspiring and points directly to my interests as a black woman entering the legal field. Additionally, I am particularly interested in engaging with federal law because thinking critically about federal issues while considering the particular facts of a case intrigues me.

My academic and professional pursuits have provided me the skills necessary to make a valuable contribution to your chambers. I developed my unique research and analytical skills through my work as a Lawyering Fellow for Boston University School of Law's Lawyering Course. Having taken this class as a first-year student, this position not only refined my research and writing skills, but also developed my leadership abilities as I helped guide first-year students. Additionally, I expanded these skills through my involvement in the Journal of Science and Technology Law and as a Research Assistant for Professor Jasmine Gonzales Rose. These positions helped me connect with a variety of areas of law, as well as formulate solutions to areas of law that affect many people. I have been able to further develop my leadership skills through my positions at Goodwin Procter's Boston office, and will continue as the Editor-in-Chief of the Journal of Science and Technology Law in the fall.

I believe that I could meaningfully contribute to your chambers next fall and look forward to the prospect of putting my research, writing, and communication skills to use. I would greatly appreciate the opportunity to interview with you. Thank you for your time and consideration.

Sincerely,
Brianna Jordan

Brianna Jordan

357 Faneuil Street, Apartment 12A, Brighton, MA 02135 • bjordan8120@gmail.com • 630.631.6266

EDUCATION

Boston University School of Law — **Boston, MA**
J.D. Candidate — Expected: May 2024
GPA: 3.56
Honor: *Journal of Science and Technology Law*, Editor-In-Chief (2023-2024); *Access to Justice Clinic*
Activities: Research Assistant for Professor Jasmine Gonzales Rose; Lawyering Fellow; Secretary for the Women of Color Collaborative

University of Illinois at Urbana-Champaign, Gies College of Business — **Champaign, IL**
Major: B.S. Supply Chain Management and Marketing with Highest Honors / Minor: Criminology, Law, and Society — May 2021
GPA: 3.9
Honors/Awards: 2021 Poets & Quants Best and Brightest Undergraduate Business Majors, Campus Honors Program (Chancellor's Scholar), Dean's List, Gies Scholars Program (1 of 36 students chosen from the top 1% of students admitted into the Gies College of Business) (L.S. Hall Scholarship), James Scholar, President's Award Scholarship
Activities: Co-Senior Board Head, Philanthropy Chair, Family Chair of Phi Chi Theta; Business Manager of No Comment A Cappella

PROFESSIONAL EXPERIENCE

United States Court of Appeals for the First Circuit — **Boston, MA**
Fall 2022 Intern — September 2022 – December 2022
- Drafted bench memos by efficiently and effectively reviewing the trial court opinion, appellate briefs, and applicable case law
- Cite checked draft opinions from other Judges on the Court to ensure grammatical, formatting, and content accuracy
- Conducted research on questions of law and fact for an upcoming opinion

Goodwin Procter LLP — **Boston, MA**
2L Diversity Fellow — May 2023 – July 2023
1L Diversity Fellow — May 2022 – July 2022
SEO Law Fellow — May 2021 – July 2021
- Compiled publications and testifying history in preparation for a deposition of an expert witness on a patent case
- Updated a chapter of a treatise on joint venture law in federal court by analyzing negative treatment on cases in the current chapter and identifying relevant new cases since the last update
- Conducted research on relevant case law for motions to dismiss in the employment and financial services practices
- Researched and drafted an educational blog post sent to clients on updated trends in the regulation of self-driving cars in the U.S.

Aetna, a CVS Health Company — **Chicago, IL**
GMCIP, LMO North Central Territory Intern — June 2020 – August 2020
- Analyzed April 2020 raw financial data from Aetna's five joint ventures to create a monthly membership report highlighting areas of growth and improvement on an aggregate level
- Created a Sales Management Dashboard for the Minnesota market by combining data from Excel and Salesforce to improve communication of the effectiveness of three sales leaders to their respective managers
- Collaborated with a fellow intern to implement a uniform onboarding process across the North Central Territory
- Designed a new operating model to accommodate organizational changes within the North Central Territory after gauging feedback from territory leaders and identifying areas of improvement in the meeting schedule

Supply Chain Management Program, Gies College of Business — **Champaign, IL**
Supply Chain Management Student Advisor — August 2020 – May 2021
- Assisted faculty and staff with planning and facilitating six events surrounding various areas of supply chain management and professional opportunities for students with corporate affiliate companies
- Hosted office hours for four hours each week to answer program-specific questions, give advice, and formulate four-year plans

Business 101: Professional Responsibility and Business — **Champaign, IL**
Section Leader — August 2018 – December 2020
- Led discussions and class activities to a group of 15-20 freshman students in a course that focuses on decision-making models, corporate citizenship, and culminates with a capstone case competition
- Supported students through answering questions, gauging participation in class, and offering advice for acclimating to Gies

CERTIFICATIONS & INTERESTS

Certifications: Hotshot Summer Associate Certificates in Business Law and Litigation; Legal Research Skills for Practice
Interests: Baking, Concerts, International Travel, Singing (Broadway music and a cappella)

BOSTON UNIVERSITY SCHOOL OF LAW

Name: JORDAN, BRIANNA K
Date Entered: 09/07/2021
Colleges and Degrees:
UNIVERSITY OF ILLINOIS AT URBANA CHAMPAI, B.S. 5/15/2021 WITH HIGHEST HONORS
Other Law School Attendance:

Degree Awarded:
Date Graduated:
Honors:

Academic Record		Credits	Grades
Semester 1 - 2021 -2022			
CIVIL PROCEDURE (B)	BOOTHE	4	B+
CONTRACTS (B)	VAN LOO	4	B+
LAWYERING SKILLS 1	D'AMATO	2.5	A-
TORTS (B2)	ZEILER	4	B
Semester 2 - 2021 -2022			
CONSTITUTIONAL LAW (B)	TSAI	4	A
CRIMINAL LAW (B)	CAVALLARO	4	B
LAWYERING LAB	VOLK ET AL	1	P
LAWYERING SKILLS II	D'AMATO	2.5	A-
MOOT COURT	D'AMATO	-	P
PROPERTY (B)	LAWSON	4	A-
Semester 3 - 2021 -2022			
BUSINESS FUNDAMENTALS	WALKER/TUNG	-	P

Year	Hours	Weighted Points	Weighted Average					
1st	29/30	99.70	3.44					

Semester 1 - 2022 -2023			
CRITICAL RACE THEORY (S)	FEINGOLD	3	A-
JOURNAL OF SCIENCE & TECHNOLOGY LAW - 2L MEMBER		1	CR
JUDICIAL EXTERNSHIP PRGM: FIELDWORK		6	P
JUDICIAL EXTERNSHIP PRGM: SEMINAR	HENRY	1	A
LAWYERING FELLOWS	D'AMATO	2	A
SEX CRIMES (S)	TENNEN	3	A
Semester 2 - 2022 -2023			
ALTERNATIVE DISPUTE RESOLUTION	BAMFORD	3	A-
EVIDENCE	BORENSTEIN	4	B
FEDERAL COURTS	COLLINS	4	CR
JOURNAL OF SCIENCE & TECHNOLOGY LAW - 2L MEMBER		1	CR
LAWYERING FELLOWS	D'AMATO	2	A
PROFESSIONAL RESPONSIBILITY	DONWEBER	3	A

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average		
2nd	21/33	78.20	3.72	50/63	177.90	3.56		

Semester 1 - 2023 -2024			
ADMINISTRATIVE LAW	BEERMANN	4	*
CIVIL LITIGATION & JUSTICE PRGM: ACCESS TO JUSTICE	MANN	3	*
CIVIL LITIGATION: A2J SKILLS 1 AND PRO RESP	MANN	3	*
FOOD, DRUG & COSMETIC LAW	MILLER	3	*
JOURNAL OF SCIENCE & TECHNOLOGY LAW - 3L EDITOR		2	*
Semester 2 - 2023 -2024			
CIVIL LITIGATION & JUSTICE PRGM: ACCESS TO JUSTICE	MANN	3	*
CIVIL LITIGATION PROGRAM: A2J SKILLS 2	MANN	3	*
FAMILY LAW	SILBAUGH	3	*
PERSUASIVE WRITING: TRIAL LEVEL	D'AMATO	3	*

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average	Total Hours	Final Average
3rd			0.00	50/63	177.90	3.56	50/63	3.56

1974 Family Educational Rights and Privacy Act Information

The information contained on this transcript is not subject to disclosure to any other party without the expressed written consent of the student or his/her legal representative. It is understood this information will be used only by the officers, employees and agents of your institution in the normal performance of their duties. When the need for this information is fulfilled, it should be destroyed.

Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten

Aida E. Ten, Registrar

Date Printed: 6/12/2023

Boston University School of Law
Transcript Guide

SYMBOLS OR ABBREVIATIONS

AUD	Audit	**H**	Honors
CR	Credit	**NC**	No credit
P	Pass	**F**	Fail
W/D	Withdrawal from course		
*	Indicates currently enrolled		
(C)	Clinical		
(S)	Seminar		
(Y)	Year-long course		

Academic Qualifications – JD Program: The School of Law has a letter grading system in courses and seminars. The minimum passing grade in each course and seminar is a **D**. Beginning with the Class of 2017, a minimum of eighty-five passing credit hours must be completed for graduation. Prior classes required a minimum of eighty-four passing credit hours. The minimum average for good standing is C (2.0) and the minimum average for graduation is C+ (2.3). Prior to 2006 the minimum average for good standing and graduation was C (2.0).

GRADING SYSTEM

1. **Current Grading System** The following letter grade system is effective fall 1995. The faculty has set the following as an appropriate scale of numerical equivalents for the letter grading system used in the School of Law:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-30%
B+ and above	40-60%
B	10-50%
B- And below	10-30%
C+ and below	0-10%
D, F	0-5%

2. **Fall 1995-Spring 2008**

For **first-year courses** with enrollment of twenty-six or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-25%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	5-10%
D, F	0-5%

3. **1991 Changes to Letter Grade System.**

The curve is mandatory for all seminars or courses with enrollments of twenty-six or more.

Grade	Number Equivalent	Curve
A+	4.5	
A	4.0	15-20%
B+	3.5	
B	3.0	50-60%
C+	2.5	
C	2.0	20-35%
D	1.0	
F	0	

The median for all courses with enrollments of twenty-six or more is B. For smaller courses, a median of B+ is recommended but not required.

GRADES FOR COURSES TAKEN OUTSIDE THE SCHOOL OF LAW

Grades for courses taken outside of BU Law are recorded as transmitted by the issuing institution or as CR. Credit toward the degree is granted for these courses and no attempt is made to convert those grades to the BU Law grading system. The grade is not factored into the law school average.

CLASS RANKS

BU Law does not rank students in the JD program with the following exceptions:

Mid-Year Ranks

Effective May 2014, the Registrar is authorized to release the g.p.a. cut-off points to the top 5%, 10%, 15%, 20%, 25% and one-third for the fifth semester in addition to third semester reporting adopted May 2013 and yearly reporting of the same.

Effective January 2013

For students who have completed their third semester, with respect to the cumulative average earned during the fall semester, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class. This is in addition to the yearly reporting described below.

Effective May 2011

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide grade point average cut-offs for the top 10 percent, 25 percent and one-third of each section.

For students who have completed their second year or third year, with respect to both the average earned during the most recent year and cumulative average, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class.

Class of 2008 and subsequent classes through April 2011.

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide g.p.a. cut-off points for the top 10 percent of each section.

For students who have completed the second year or third year, with reference to both the second-year or third-year g.p.a. and cumulative g.p.a., the Registrar will inform the top fifteen students in the class of their ranks and will provide g.p.a. cut-off points for the top 10 percent of the class.

Scholarly Categories
(Based on yearly averages only)

Class of 2008 and subsequent classes:

First Year – the top five students in each first-year section will be designated G. Joseph Tauro Distinguished Scholars. The remaining students in the top ten percent of each first-year section will be designated G. Joseph Tauro Scholars.

Second Year – the top fifteen students in the second year class will be designated Paul J. Liacos Distinguished Scholars. The remaining students in the top ten percent of the second-year class will be designated Paul J. Liacos Scholars.

Third Year – the top fifteen students in the third year class will be designated Edward F. Hennessey Distinguished Scholars. The remaining students in the top ten percent of the third-year class will be designated Edward F. Hennessey Scholars.

Graduate Program Transcript Guides

LL.M. in Taxation

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

The grade averages of continuing part-time students whose enrollment began before the fall 1995 semester were converted to the new number equivalents.

Fall 1991 to Spring 1995

From the fall 1991 semester through the spring 1995 semester, the following letter grading system was in effect for students who were graduated before the fall 1995 semester:

A+	4.5	C+	2.5
A	4.0	C	2.0
B+	3.5	D	1.0
B	3.0	F	0.0

Current Degree Requirements

Effective May 2016, completion of 24 credits. Minimum average of 2.3 and no more than one grade of D.

Spring 1993 to Fall 2015

Completion of 24 credits. Minimum average of 3.0 and no more than one grade of D.

Fall 1991 to Fall 1993

Completion of ten courses (20 credits). Minimum average of 3.0 (with no more than one grade below 1.0).

LL.M. in Banking and Financial Law

Current Grading System

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective April 2016, completion of 24 credits with a minimum average of 2.7 and no more than one grade of D or F.

Fall 2012 to Spring 2016

Completion of 24 credits with a minimum average of 3.0 and no more than one grade of D or F.

Fall 1991 to Fall 2012

Completion of ten courses (20 credits). Minimum average 3.0 (with no more than one grade below 1.0).

LL.M. in American Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

LL.M. in Intellectual Property Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
C-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

Executive LL.M. in International Business Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective Spring 2014, completion of twenty credits with a minimum g.p.a. of 3.0 including the successful completion (CR) of two colloquia.

Grading System prior to Spring 2014

Honors (H)	Credit (CR)
Very Good (VG)	No Credit (NC)
Pass (P)	Fail (F)

Requirements Prior to Spring 2014

Completion of six courses (18 credits) and two colloquia (2 credits) for a total of 20 credits. The minimum passing grade for each course is Pass (P). The minimum passing grade for each colloquium is Credit (CR).

5/2016 rev2

Boston University's policies provide for equal opportunity and affirmative action in employment and admission to all programs of the University.

BU School of Law

Transcript Guide Addendum

JURIS DOCTOR PROGRAM
LL.M. IN AMERICAN LAW PROGRAM
LL.M. IN INTELLECTUAL PROPERTY LAW PROGRAM

Grading System – Distribution Requirements

Effective Fall 2019

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	2-5 %
A+, A	15-25%
A+, A, A-	30-40%
B+ and above	50-70%
B	15-50%
B- and below	0-15%
C+ and below	0-10%
D, F	0-5%

Fall 2020

The distribution requirement for Fall 2020 upper-class courses with 26 or more students was suspended. Upper-level courses with 26 or more students were required to conform to a B+ median.

Effective Spring 2021

For all upper-level courses with an enrollment of 26 or more a B+ median is required with the following additional constraints:

A+	Maximum 5%
A+, A, A-	Minimum 30%
B and below	Minimum 10%
B- and below	Maximum 15%
C+ and below	0-10%
D, F	0-5%

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Brianna Jordan

Dear Judge Walker:

I am writing to provide my enthusiastic support for Ms. Brianna Jordan's application for a judicial clerkship in your chambers. I have had the pleasure of knowing Ms. Jordan for two years in my capacity as her faculty mentor. More recently, Ms. Jordan has also worked for me as a Research Assistant and has provided research and writing support to ongoing projects at the Boston University Center for Antiracist Research.

While serving as a Research Assistant, Ms. Jordan has assisted on several projects at the intersection of Evidence Law and racism, such as on the racial impact of prior-conviction evidence rules. Ms. Jordan has consistently prepared well-researched and clearly presented legal memoranda after having effectively surveyed the existing case law and literature in the field. Ms. Jordan also can hold well-informed discussions about the issues concerning her research and has a keen eye for detail and nuance while making legal arguments. Whether it is an email, meeting invitation, or phone call, Ms. Jordan is prompt with responses, asks relevant questions about assignments, and adequately checks in with supervisors to ensure clarity in her progress. She has proven to be a very valuable member of our team.

In my capacity as Ms. Jordan's faculty mentor, I have learned that Ms. Jordan excelled in the Lawyering Skills course. She also is a Legal Writing Fellow and continues to mentor current first-year students on strategies for effective research and writing. Additionally, Ms. Jordan served as an intern for the Honorable O. Rogeriee Thompson on the First Circuit. I believe that her background in legal research has prepared her well to assist you in chambers.

I have been very impressed with Ms. Jordan's involvement in the law school community which she makes time for despite a strenuous workload. She currently serves on the executive board for the Women of Color Collaborative and has been proactive about creating an inclusive and safe community for this group of students within BU School of Law. She will serve as the Editor-in-Chief of the Journal of Science and Technology Law during the upcoming school year, and I look forward to learning more about her contributions to the journal as a leader and scholar. Ms. Jordan has much to offer to the legal community and clerking in your court will shape her into a better lawyer and advocate.

In conclusion, I give Ms. Jordan my recommendation without reservations. If you have any questions please feel free to contact me at jgrose@bu.edu or 617-358-6187.

Sincerely,

Jasmine Gonzales Rose
Professor of Law, Boston University
Chair of Policy, BU Center for Antiracist Research

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Please accept this letter of recommendation on behalf of Brianna Jordan, who I enthusiastically recommend as a law clerk. Brianna possesses a distinct combination of attributes that would make her an asset in any judge's chambers. Brianna is a talented student with a team-first mentality and the ability to take leadership when needed. I base my comments on my experience as Brianna's professor, my opportunity to observe Brianna in multiple leadership roles at BU Law, and my own experience clerking for federal district and appellate judges.

I first met Brianna when she was in my Fall 2022 Critical Race Studies seminar. This is a relatively small course (~16 students) that forces students to engage material that is often intellectually challenging and emotionally fraught. Given these dynamics, I rely heavily on students to help create and maintain a classroom culture committed to analytical rigor and inter-personal generosity and grace.

From day one, Brianna was one of the foremost students who helped construct a learning environment conducive to our collective success. This included different sorts of contributions. On the one hand, Brianna was an immediate and constant contributor. In any class, proactive student engagement is important. But in a small, intimate seminar, proactive student engagement is essential. The class only works if students take a lead pushing and generating the conversation. Brianna did precisely that.

But Brianna did more than simply talk. She engaged the material from a place a thoughtful, curious, and disciplined analysis. Such engagement is not a given. In courses that directly engage politically charged topics, students tend to arrive with strong, emotionally laden opinions. There is nothing wrong with having a strong, emotionally laden opinion—those opinions and emotions are often well founded. But there is a risk that such perspectives and feelings can interfere with the students' collective and individual ability to critically engage assigned readings and to meaningfully interrogate their own assumptions.

This is where Brianna excelled. She did not deny or marginalize her own perspective or experience, but neither did she let her perspective and experience over-determine her engagement with the material and her classmates. In key respects, Brianna showed how to engage challenging material passionately and productively. Beyond offering an exemplary model for her classmates, my sense is this approach also supported Brianna's own learning throughout the semester. Brianna arrived a thoughtful and talented student. But she also left the semester able to engage critical questions with a heightened level of sophistication and precision.

Brianna made one other notable contribution to the Critical Race Theory seminar. Her engagement did not block out other students. To the contrary, she consistently created space for other students to engage—whether or not they agreed with her perspective. Personally, this is one of the most valuable assets a student can bring to a class. In an age when many students are anxious about how their comments will be perceived, it is particularly valuable to have students curate a classroom environment where everyone can trust that their contributions will be taken seriously and engaged on the merits. Brianna did that. We all benefitted for it.

Beyond her terrific contributions and performance in my class, I have observed Brianna's leadership as a member of the BU Law community. Her contributions include her leadership role on the Women of Color Collaborative; her upcoming tenure as the Journal of Science and Technology Law's Editor and Chief; and her role as a Lawyering Fellow supporting first-year students in BU Law's legal research program.

To recap, Brianna possesses a unique combination of qualities that will make her an absolute asset in any judge's chambers. I wholeheartedly endorse Brianna's candidacy. To the extent helpful, I would welcome the opportunity to further sing Brianna's praises over the phone.

Many thanks for considering my thoughts. Please feel free to reach out if you have any questions.

Sincerely,

Jonathan P. Feingold

Jonathan Feingold - jfeingol@bu.edu - 617-353-5793

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Judicial Clerkship Recommendation for Brianna Jordan

Dear Judge Walker:

I am pleased to write this letter of recommendation in enthusiastic support of Brianna Jordan's application for a judicial clerkship. I have had the pleasure of knowing Bri for two years. She was a student in my Lawyering Skills class during the 2021-2022 academic year, and she served as a Lawyering Fellow in my class this year. Lawyering Skills is a yearlong professional skills class with a focus on legal research, writing, and analysis. I have taught in the program for six years. Before joining BU Law, I was a litigation partner at a law firm in Boston. Having worked with many law students and junior lawyers during my career, I would place Bri at the top of the list of people I would hire if I were still in practice. She is smart, diligent, organized, kind, outgoing, and supportive. I simply cannot recommend her highly enough for a clerkship in your chambers.

Bri's strong legal research, analytical, and communication skills will make her an excellent clerk. As a first-year student, Bri fully researched and analyzed complex legal issues ranging from the enforceability of a liability waiver to a criminal defendant's Fourth Amendment rights against unreasonable search and seizure. Bri's written assignments always reflect the significant effort she puts into each step of the writing process, from research, to writing, to proofreading and cite-checking. Her work on the capstone appellate brief assignment involving a defendant's Fourth Amendment rights best exemplifies Bri's abilities. This assignment required students to work with a partner to submit a joint brief on two separate legal issues, with each student arguing one issue. Bri's individual argument that a police search of a defendant's trash in the driveway of his home did not violate the defendant's Fourth Amendment rights was particularly well reasoned and compelling due to Bri's close reading of the facts and effective use of the case law. Bri's work on the joint portions of the appellate brief also demonstrates her close attention to detail and ability to work both independently and as part of a team. Bri formed a close working relationship with her partner that continues to this day, and together they submitted a comprehensive and beautifully formatted brief. Given their work on this assignment, it is not surprising that Bri and her partner have gone on to become the Editors-in-Chief of their respective law journals. Bri's oral argument on this assignment also stood out as one of the best. In fact, Bri performed exceptionally well in all the verbal communication simulations we did in class, including a client interview, a supervisor presentation, and an earlier oral argument on a motion to dismiss. Bri is both a dynamic speaker and a good listener. This powerful combination makes her an effective communicator in a variety of settings, from one-on-one meetings to class discussions and court hearings. Bri has continued to develop her research, analytical, and communication skills through her 2L coursework and her work as a Lawyering Fellow, a member of the Journal of Science and Technology Law (JSTL), and an intern for the First Circuit Court of Appeals. These well-honed skills will undoubtedly serve her well as a judicial clerk.

Bri's consummate interpersonal skills and collaborative nature will also contribute to her success as a clerk. Bri has managed the demands of law school with confidence and optimism. As a 1L, she enthusiastically approached her academic and extracurricular responsibilities without any sign of the malaise that often plagues first-year law students. As a 2L, she shined in her role as a Lawyering Fellow, providing helpful feedback on students' written work and offering valuable guidance and support as a student-mentor. In their written evaluations of Bri, students described her as incredibly helpful, supportive, and patient, and several students of color noted the important role Bri played as a role model for them. Many students who applied to be a Lawyering Fellow next year specifically listed Bri as the reason they decided to apply. I have also benefitted from Bri's generous spirit. She was also always the first person to volunteer to take on extra work as a Fellow, whether holding additional office hours, teaching an extra session on citations, or playing a role in an in-class simulation. And her kind words and encouragement helped me get through a particularly busy spring semester. These qualities will make Bri a helpful and supportive colleague to everyone in your chambers.

Finally, Bri's strong work ethic and time management skills will allow her to meet the demands of a judicial clerkship. These qualities have enabled Bri to excel academically while actively participating in many other activities and responsibilities, including her work as a Fellow, as a staff member and incoming Editor-in-Chief of JSTL, as a Research Assistant, and as secretary of the Women of Color Collaborative. Notwithstanding her busy schedule, Bri meets all deadlines and puts 100% into everything she does. This will make her a productive and successful clerk.

In sum, teaching and working with Bri has been a highlight of my time at Boston University School of Law. She is a very special student, and she will be an exceptional judicial clerk.

Please do not hesitate to contact me at 617-358-6060 or ledamato@bu.edu if you need additional information or have any questions.

Sincerely,

Laura D'Amato
Lecturer and Director, Lawyering Program

Laura D'Amato - ledamato@bu.edu

Brianna Jordan

bjordan@bu.edu • 630-631-6266

357 Faneuil St., Apt. 12A, Brighton, MA 02135

WRITING SAMPLE

I am attaching a copy of an open memo I wrote for my Lawyering Skills course in which I was enrolled in Fall 2021. The memo considers, given the facts, whether an employee could establish a prima facie claim against his employer under the New Jersey Conscientious Employee Protection Act. Professor Laura D'Amato gave feedback and permission to use this memo as a writing sample.

MEMORANDUM

To: Professor D'Amato
From: Brianna Jordan
Date: November 24, 2021
Subject: Mann: CEPA Prima Facie Claim

Question Presented

Can employee Terry Mann establish a prima facie claim under the New Jersey Conscientious Employee Protection Act ("CEPA") against his employer Tricks?

Brief Answer

Mann likely can establish a prima facie CEPA claim because (1) he reasonably believed Tricks was violating a law; (2) he performed a protected "whistle-blowing" activity; (3) an adverse employment action was taken against him; and (4) there was a causal connection between his "whistle-blowing" activity and the adverse employment action.

Facts

Our client, Terry Mann ("Mann"), is a server at a restaurant called Tricks in Winston, New Jersey. As an employee since 2018, Mann is one of the longest tenured servers at Tricks. He really enjoys his job, is well liked by coworkers, and consistently gets positive performance evaluations. Mann prefers the day shifts because he dislikes the "rowdy" atmosphere of night shifts due to the Winston University undergraduate crowd. Mann's manager Ty Lue ("Lue") is aware of this preference and, until recently, did his best not to schedule Mann on Friday and Saturday night shifts. Additionally, Mann is dating Bea Smith ("Smith") who is Tricks' Associate General Counsel for Compliance. Soon after they began dating, Mann and Smith disclosed their relationship to the General Counsel and were permitted to date since Smith is not Mann's supervisor.

As Associate General Counsel, Smith is responsible for ensuring Tricks complies with local, state, and federal law. Logistically, she reports to the General Counsel and has four employees who report to her, including Luke Kennard ("Kennard"). The employee manual states

that employees "are required to report any suspected violation of law or public policy to Luke Kennard, the staff attorney for compliance for New Jersey."

In July 2021, Mann started working Friday nights after two servers suddenly quit. While working these shifts, he noticed the bartenders were not checking the IDs of patrons ordering drinks. When he asked them, the bartenders told Mann that Lue had told them to "be chill" about checking IDs. Lue confirmed this when Mann asked him about it, saying that "the pandemic hit us really hard; you don't want us to have to start laying people off do you," which Mann wrote on a napkin directly after their conversation for recollection. Although Mann felt uncomfortable with this, he went along with it and did not check IDs.

On July 16, 2021, Mann worked the night shift and encountered a seemingly underage student who almost hit him in the face with a bottle and threw up on him. That night, Mann texted Smith to explain what happened with the patron and specifically mentioned Lue's instruction not to check IDs.

The text conversation commenced as follows:

> Mann: Work was rough today, like really rough.
> Smith: Oh no! What happened???
> Mann: Well, there were a ton of kids in there again tonight. A bunch of Winst freshmen who don't know how to handle their liquor.
> Smith: What? Didn't somebody ID them?
> Mann: No. Ty told everyone not to check IDs anymore so we can make up for lost money from the pandemic.
> Mann: I know it's illegal, but I guess there's nothing I can do about it.

On July 20, Lue called Mann into his office and indicated he knew about Mann's conversation with Smith and told Mann he would "make [his] life as difficult as possible while he worked at Tricks" after getting reprimanded by the corporate office. Immediately following this conversation, Lue scheduled Mann to work exclusively during night shifts, which resulted in a reduction in average weekly hours from thirty-eight to thirty-six and a 1% reduction in pay.

Mann is unhappy with his work environment and is concerned about finding new employment. He has inquired about whether he has the right to sue Tricks about this treatment.

Discussion

Under New Jersey's CEPA statute, an employer is not permitted to take retaliatory action against an employee if the employee:

> a. Discloses, or threatens to disclose to a supervisor … an activity, policy or practice of the employer … that the employee reasonably believes:
> i. Is in violation of a law, or a rule or regulation promulgated pursuant to law, … including any violation involving deception of, or misrepresentation to, any … employee [or] former employee.

N.J. Stat. Ann. § 34:19-3(a) (West 2021).

This statute is considered "remedial" legislation and has been construed liberally to achieve its social goals of protecting employees and encouraging them to report illegal and unethical activities in the workplace. See Abbamont v. Piscataway Twp. Bd. of Educ., 650 A.2d 958, 971 (N.J. 1994); see also Dzwonar v. McDevitt, 828 A.2d 893, 900 (N.J. 2003).

An employee can establish a prima facie CEPA claim if they can demonstrate that: (1) they reasonably believed their employer's conduct was violating a law, rule, or regulation; (2) they performed a "whistle-blowing" activity described in CEPA; (3) an adverse employment action was taken against them; and (4) a causal connection exists between the "whistle-blowing" activity and the adverse employment action. Dzwonar, 828 A.2d at 900. Here, Mann demonstrated an objectionably reasonable belief that Tricks was violating a law because he said in his text messages that he knew not checking IDs was illegal. Abbamont, 650 A.2d at 967 (holding that employee had an objectively reasonable belief that employer violated regulation due to his description of the environment and outside sources confirming violation). Thus, Mann will likely be able to bring a prima facie CEPA claim if (1) he performed a "whistle-blowing"

activity, (2) there was an adverse employment action taken against him, and (3) there was a causal connection between the whistle-blowing activity and the adverse employment action.

1. Performed "Whistle-blowing" Activity

To establish a prima facie CEPA claim, an employee must perform a "whistle-blowing" activity. Dzwonar, 828 A.2d at 900. An employee performs a protected "whistle-blowing" activity if they disclose an illegal or unethical activity performed by their employer to a supervisor. § 34:19-3(a). A supervisor is:

> Any individual with an employer's organization (1) who has the authority to direct and control the work performance of the affected employee, (2) who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains, or (3) who has been designated by the employer on the notice required.

§ 34:19-2(d).

A supervisor can take corrective action if the complaint clearly falls within the responsibilities of their role. Abbamont v. Piscataway Twp. Bd. of Educ., 634 A.2d 538 (N.J. Super. 1993), aff'd, 650 A.2d 958 (N.J. 1994) (finding that principal had authority to take corrective action due to responsibility to direct and control work of teachers and check ventilation of machines). This activity does not have to be disclosed to a specific supervisor, including the CEPA designee, but any supervisor that qualifies under the CEPA definition. See Fleming v. Corr. Healthcare Sol., Inc., 751 A.2d 1035, 1039 (N.J. 2000) (holding that employer has no right to limit CEPA's definition of supervisor by requiring employees to submit complaints to a specific supervisor). Additionally, an employee's CEPA complaint may be a valid disclosure even if it is not clear on a specific violation. See Beasley v. Passaic Cnty., 873 A.2d 673, 684 (N.J. Super. Ct. App. Div. 2005) (holding that despite employee not explicitly

stating an exact violation of the law, no magic words are required to establish reasonable belief of illegal activity).

Here, Smith qualifies as a supervisor under CEPA's definition because she has authority to take corrective action with her responsibility to ensure Tricks complies with all local, state, and federal laws. See § 34:19-2(d); see also Abbamont, 634 A.2d 538. Since the texts exchanged between Mann and Smith mention serving alcohol to underaged patrons, Smith had the responsibility of formally reprimanding Lue for his instructions to the staff. Id. Also, Mann was not required to submit his CEPA complaint to Kennard, despite the language in the employee handbook. Fleming, 751 A.2d at 1039. Finally, while Mann did not identify Tricks' exact violation, his language within the text conversation with Smith was sufficiently clear to constitute a disclosure of a violation. Beasley, 873 A.2d at 684. Therefore, Mann likely performed a protected "whistle-blowing" activity when he texted Smith.

2. Adverse Employment Action

To establish a prima facie CEPA claim, an employee must also demonstrate that an adverse employment action was taken against them. Dzwonar, 828 A.2d at 900. A retaliatory action includes the discharge, suspension, or demotion of an employee, or other adverse employment actions taken against them in the terms and conditions of employment. § 34:19-2(e). An adverse employment action changes the terms and conditions of employment if it affects the employment relationship, such as length of the workday, increase or decrease in salary, physical arrangements and facilities, or promotional procedures. Beasley, 873 A.2d at 684 (holding that employer affected terms and conditions of employment when made changes to length of employee's workday and compensation). An action that results in any reduction of compensation constitutes an adverse employment action. See Maimone v. City of Atlantic City, 903 A.2d 1055,

1064 (N.J. 2006) (holding that employer took adverse employment action against employee when change resulted in 3% reduction in compensation). However, actions that simply make employees unhappy do not constitute adverse employment actions. Ivan v. Cnty. Of Middlesex, 595 A.2d 425, 473 (2009) (holding that poor treatment from colleagues not directly related to whistle-blowing activity did not constitute adverse employment action).

Here, the change in Mann's schedule caused a change in the terms and conditions of his employment through a shortening of his workday and loss of pay due to reduced hours. Beasley, 873 A.2d at 684. Additionally, while this change only resulted in a 1% reduction of compensation, any reduction is sufficient to establish an adverse employment action under CEPA. Maimone, 903 A.2d at 1064. Finally, although Mann's unhappiness about the schedule change is not sufficient to establish an adverse employment action, CEPA's social goals of protecting employees emphasizes the weight of his reduction in compensation to constitute an adverse employment action against Mann at Tricks. See Ivan, 595 A.2d at 473; see also Dzwonar, 828 A.2d at 900.

3. Causal Connection

An employee can complete a prima facie CEPA claim if they can establish a causal connection between their "whistle-blowing" activity and the adverse employment action taken against them. Dzwonar, 828 A.2d at 900. Causation can be proven through the presentation of direct or circumstantial evidence that a discriminatory reason was more likely than not a motivating or determining cause of the employer's action. See Romano v. Brown & Williamson Tobacco Corp., 665 A.2d 1139, 1143 (N.J. Super. Ct. App. Div. 1995). Additionally, surrounding circumstances related to the employee's character that affect the employer's view of them may lead to an inference of a causal connection. See Est. of Roach v. TRW, Inc., 754 A.2d

544, 552 (N.J. 2000) (finding that employer's reliance on evaluation with tainted view of employee was sufficient to infer causation to retaliatory action). Also, although it is not sufficient to establish causation, a causal inference may be created through temporal proximity of the employer's knowledge of the activity and retaliatory action. See Crane v. Yurick, 287 A.2d 553, 560 (D.N.J. 2003) (finding that employee's immediate transfer after employer read sealed union letter with employee's support of filing charges against him created causal inference).

Here, Lue's expressing he would "make Mann's life as difficult as possible while he worked at Tricks" creates an inference of a causal connection in the changing of Mann's schedule. Romano, 665 A.2d at 1143. Additionally, the surrounding circumstances of Lue knowing and expressing frustration about the conversation between Mann and Smith further lead to an inference that there is a causal connection between the conversation and the changing of Mann's schedule. Est. of Roach, 754 A.2d at 552. Finally, although Mann had already been working some night shifts prior to the schedule change, the immediate change in his schedule after Lue indicated he knew of Mann's conversation with Smith creates a strong inference that Lue's actions were due to this conversation. Crane, 287 A.2d at 560. Therefore, a causal connection likely exists between Mann's "whistle-blowing" activity and Lue's retaliatory action.

Conclusion

Mann likely can establish a prima facie CEPA claim against Tricks. Mann demonstrated an objectively reasonable belief Tricks violated a law. Additionally, Smith's role fits the definition of supervisor under CEPA, so Mann's disclosure was a proper whistle-blowing activity. Furthermore, although Mann was unhappy with this schedule change, the reduction in pay constitutes an adverse employment action. Finally, the proximity of the conversation with Smith and the change in schedule establishes a causal connection.

Applicant Details

First Name	**Rebecca**
Last Name	**Kamas**
Citizenship Status	**U. S. Citizen**
Email Address	**rrk24@georgetown.edu**
Address	**Address** Street **9115 September Ln** City **Silver Spring** State/Territory **Maryland** Zip **20901** Country **United States**
Contact Phone Number	**512-665-8351**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2012**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 19, 2024**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gunja, Mushtaq
mg1711@georgetown.edu
Robert, Lepore
Robert.Lepore@usdoj.gov
MacDougall, Mark
mmacdougall@akingump.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Rebecca Kamas
Silver Spring, MD | 512-665-8351 | rrk24@georgetown.edu

Rebecca Kamas
9115 September Ln
Silver Spring, MD 20901

June 24, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am an evening student at Georgetown University Law Center, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term. As an aspiring federal prosecutor with an interest in white-collar enforcement, I want to clerk because it will make me a better trial attorney, and I want to clerk for you, in particular, because of your experience as an AUSA.

Though being an evening student at Georgetown is not the traditional law school experience, it has allowed me to work full-time at DOJ and gain substantial litigation experience. I have over seven years of experience performing merger analysis, drafting memoranda, and working on civil investigations and litigations with the Antitrust Division. Last fall, I took on an internship with the Public Integrity Section of DOJ (while also maintaining my role and duties at Antitrust), allowing me to gain some practical criminal law experience and further develop my functional legal research and writing. On my current detail, I have worked closely with an attorney on editing and rewriting parts of an internal deliberative product, an exercise that has further trained me to prioritize clarity, accuracy, and concision in my writing. Though adding an internship last fall and balancing my current demanding detail with school has been challenging, I am proud of how much I have accomplished while achieving my strongest academic performance at Georgetown to date.

My resume, transcripts, and writing sample are attached. Also included with my application are recommendations from Bobby Lepore, my Section Chief at the Antitrust Division; Mark MacDougall, my Federal White Collar Crime and Sentencing professor; and Mushtaq Gunja, my Criminal Justice, Evidence, and Advanced Criminal Procedure professor. Please let me know if I can provide any additional information or references. I hope to have the opportunity to interview with you. Thank you for your consideration.

Respectfully,

Rebecca Kamas

Rebecca Kamas

Silver Spring, MD | 512-665-8351 | rrk24@georgetown.edu

EDUCATION

GEORGETOWN UNIVERITY LAW CENTER – Washington, DC *Expected May 2024*
Juris Doctor (*Evening Program*)
National Security Law Specialization Program
Georgetown Guantanamo Observers Program
GPA: 3.76; Dean's List 2020-2021

GEORGETOWN UNIVERITY – Washington, DC *May 2012*
Bachelor of Science in Foreign Service, International Politics
Concentration in International Security Studies
Cumulative GPA: 3.52; *Cum Laude*; Phi Alpha Theta History Honor Society

PROFESSIONAL EXPERIENCE

DEPARTMENT OF JUSTICE SPECIAL COUNSEL'S OFFICE (SMITH) – Washington, DC
Paralegal Specialist – Detailee (TS//SCI) *Jan 2023 – Present*
- Provides paralegal support to the special counsel's investigations

DEPARTMENT OF JUSTICE ANTITRUST DIVISION – Washington, DC
Supervisory Paralegal Specialist – Transportation, Energy, and Agriculture Section *June 2020 – Jan 2023*
- Managed, reviewed, coached, and provided performance feedback to team of 14 paralegals
- Worked with section management to ensure all section matters are adequately staffed with paralegals, balancing cases with scheduled depositions, new investigations opened by the section, and multiple simultaneous litigations
- Served as lead paralegal on investigations as section workload required, arranging and conducting interviews, drafting memos, and performing case-specific market research
- Trained 18 new hires in antitrust law, merger filing (HSR) review, case management, and division best practices
- Implemented merger review assignment system to better distribute the section workload and was awarded Assistant Attorney General (AAG) Award for work on merger filing review

DEPARTMENT OF JUSTICE CRIMINAL DIVISION – Washington, DC
Legal Intern (Part time) – Public Integrity Section *Sept 2022 – Dec 2022*
- Performed legal research and drafted memoranda that informed charging or other strategic decisions for public corruption and election crimes prosecutions
- Drafted, prepared, and edited pre-trial briefs and sentencing memoranda

WISCONSIN PROJECT ON NUCLEAR ARMS CONTROL – Washington, DC
Program Associate *May 2019 – June 2020*
- Planned and executed programming visits for Wisconsin Project staff to train foreign customs, licensing, and regulatory officials in the use of a risk management database
- Traveled to Moldova and trained 22 officials in the use of the Risk Report database to screen entities for links to WMD proliferation and sanctions evasion
- Drafted and assembled quarterly and final reports for two State Department grant awards
- Managed subscriber relationships, invoicing, and payments and providing technical support for database users

DEPARTMENT OF JUSTICE ANTITRUST DIVISION – Washington, DC
Paralegal Specialist – Networks and Technology Enforcement Section *Dec 2014 – Dec 2018*
Acting Supervisory Paralegal – Networks and Technology Enforcement Section *Feb 2017 – May 2017*
- Served as lead paralegal on several investigations, drafting memos, scheduling and conducting interviews, performing document review, assisting in deposition preparation, and maintaining case files
- Represented the Division in briefings with Korean, Japanese, Chinese, and German competition authorities and briefed senior leadership on the status of foreign investigations
- Drafted a Civil Investigative Demand and negotiated document production and timing with a large tech company
- Worked with financial expert team on the *United States v. Energy Solutions* trial and received a team AAG Award
- Drafted NCRPA Federal Registry notices and performed a preliminary review of all section merger filings

Record of: Rebecca Rae Kamas
GUID: 885756867

Course Level: Juris Doctor

Degrees Awarded:
B.S. in Foreign Service May 19, 2012
School of Foreign Service
Major: International Politics
Honors: Cum Laude

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	97	Civil Procedure David Hyman	4.00	A-	14.68	
LAWJ	002	97	Contracts Anupam Chander	4.00	A-	14.68	
LAWJ	005	76	Legal Practice: Writing and Analysis Jeffrey Shulman	2.00	IP	0.00	

	EHrs	QHrs	QPts	GPA
Current	8.00	8.00	29.36	3.67
Cumulative	8.00	8.00	29.36	3.67

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	004	97	Constitutional Law I: The Federal System Randy Barnett	3.00	B+	9.99	
LAWJ	005	76	Legal Practice: Writing and Analysis Jeffrey Shulman	4.00	A	16.00	
LAWJ	008	97	Torts Gregory Klass	4.00	A	16.00	
LAWJ	611	17	Questioning Witnesses In and Out of Court Jonathan Rusch	1.00	P	0.00	

Dean's List 2020-2021

	EHrs	QHrs	QPts	GPA
Current	12.00	11.00	41.99	3.82
Annual	20.00	19.00	71.35	3.76
Cumulative	20.00	19.00	71.35	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2021							
LAWJ	003	06	Criminal Justice Mushtaq Gunja	4.00	A-	14.68	

	EHrs	QHrs	QPts	GPA
Current	4.00	4.00	14.68	3.67
Cumulative	24.00	23.00	86.03	3.74

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	121	07	Corporations Charles Davidow	4.00	A-	14.68	
LAWJ	235	07	International Law I: Introduction to International Law H. Thomas Byron	3.00	A-	11.01	
LAWJ	972	08	National Security Law Todd Huntley	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	9.00	9.00	33.69	3.74
Cumulative	33.00	32.00	119.72	3.74

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Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1298	08	Global Anti-Corruption Seminar Robert Luskin	2.00	A	8.00	
LAWJ	165	07	Evidence Mushtaq Gunja	4.00	B+	13.32	
LAWJ	1765	50	J.D. National Security Law Specialization Program Todd Huntley		P		
LAWJ	455	97	Federal White Collar Crime Mark MacDougall	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	9.00	9.00	33.32	3.70
Annual	22.00	22.00	81.69	3.71
Cumulative	42.00	41.00	153.04	3.73

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2022							
LAWJ	361	06	Professional Responsibility Stuart Teicher	2.00	B	6.00	
LAWJ	415	06	Strategic Intelligence and Public Policy Seminar Dana Dyson	3.00	A-	11.01	

	EHrs	QHrs	QPts	GPA
Current	5.00	5.00	17.01	3.40
Cumulative	47.00	46.00	170.05	3.70

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	032	05	Advanced Criminal Procedure Mushtaq Gunja	2.00	A-	7.34	
LAWJ	1085	05	Sentencing Law and Policy Mark MacDougall	2.00	A	8.00	
LAWJ	1491	113	~Seminar Robin Peguero	1.00	A-	3.67	
LAWJ	1491	114	~Fieldwork 2cr Robin Peguero	2.00	P	0.00	
LAWJ	1491	40	Externship I Seminar (J.D. Externship Program) Robin Peguero		NG		
LAWJ	351	97	Trial Practice Michelle Bradford	2.00	A	8.00	

In Progress:

	EHrs	QHrs	QPts	GPA
Current	9.00	7.00	27.01	3.86
Cumulative	56.00	53.00	197.06	3.72

----------Continued on Next Page----------

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Rebecca Rae Kamas
GUID: 885756867

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	007	97	Property	4.00	A	16.00	
LAWJ	1106	08	Judicial Review of Military Justice Proceedings: Current Issues and Constitutional Perspectives	1.00	P	0.00	
LAWJ	1730	05	Advanced Legal Writing: Practical Lawyering Skills and Strategies	3.00	A	12.00	
LAWJ	1816	05	Breaking Privilege: An In-Depth Analysis of Privilege Issues in the Context of Civil Litigation Valerie Ramos	1.00	P	0.00	
LAWJ	3130	09	Investigating Transnational Criminal Organizations & National Security Threats in Cyberspace	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	11.00	9.00	36.00	4.00
Annual	25.00	21.00	80.02	3.81
Cumulative	67.00	62.00	233.06	3.76

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2023							
In Progress:							
LAWJ	1524	06	Statutory Interpretation	3.00	In Progress		
LAWJ	3134	12	The Intersection of Employment and National Security Law	1.00	In Progress		
LAWJ	358	06	Presentation Skills for Lawyers Seminar	2.00	In Progress		

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current				
Cumulative	67.00	62.00	233.06	3.76

End of Juris Doctor Record

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am extremely pleased to write this letter of recommendation for Rebecca Kamas, an evening student at the Georgetown University Law Center. I have known Rebecca for more than two years, primarily as a student in my Criminal Justice, Evidence, and Advanced Criminal Procedure classes but also in an advising capacity. As her professor, I was able to observe Rebecca's analytical skills, observed her contributions to classroom discussions, and was able to evaluate her writing. As an advisor, I was able to learn a little about her plans for her professional career. Based on my observations, I think Rebecca will make an excellent clerk and will find the clerkship experience invaluable.

Before I tell you a little bit about Rebecca, I should tell you a bit about the courses in which she was enrolled. I try to teach my courses a little differently than most professors; instead of traditional lectures, my courses are primarily problem based. I break the class up into small discussion groups several times a period, which gives me an opportunity to observe students' interactions and to help if students are struggling with a topic. Rebecca's Evidence course was the first class in-person after the pandemic and it was very helpful for me and the students to be able to have some of those small group discussions face to face and to be able to help students quickly who might have follow-up questions. I have been lucky to have Rebecca in three different courses and I feel like I have gotten to know her well.

Rebecca has been a joy to have in class. Her enthusiasm for criminal law and for litigation was clear from the moment she stepped into first year Criminal Justice. This enthusiasm translated into an excellent performance in each of her three courses with me - Rebecca always understood the material at a high level but where she excelled was in her ability to apply the doctrine to hypotheticals and real-world examples. Her ability to translate her work experience into useful examples of how the doctrine applied in the real world made her an incredible asset in class. Her performance in small group settings was especially impressive – although a little quiet, I was struck by how much Rebecca's classmates listened to her and respected her opinions and analysis.

In office hours and in advising sessions, Rebecca has been very thoughtful about how she might transition from Georgetown into a career in a courtroom. Of all of my Georgetown students, Rebecca stands out as somebody who has a clear plan of what she wants to do with her early career and has built her course selection, work experience, and internships in a manner to help her be the best trial lawyer she can be. Rebecca's work in various parts of the Department of Justice has demonstrated her commitment to criminal law. And I know that her most recent experience with the Special Counsel's office investigating former President Trump's behavior on January 6th has been especially meaningful to her and has really solidified her interest in prosecution. She is unlikely to boast about being selected to be part of the Special Counsel's team but it is a real honor to have been asked and demonstrates how much her colleagues at DOJ think of her.

Rebecca's grades in my courses have been solid (two A-s and a B+) but perhaps not quite as strong as her grades in other parts of her transcript. I do not believe that her grades in my courses demonstrate that she was behind her classmates or indicate that she would not be an excellent clerk. The margins in my classes can be quite thin and a single summative assessment often does not fully reflect how much a student has learned in class. Rebecca's demonstration of knowledge of criminal law, criminal procedure, and evidence in class gives me every confidence that she is academically ready to practice.

From what I know of Rebecca, I think a clerkship that gives her the ability to observe different approaches to the art of litigation will be invaluable to her. And I am confident that Rebecca's steadiness, optimism, and good nature will bring a joy to chambers in much the way that she brightened all three of my courses with her.

In short, I recommend Rebecca highly and without reservation. Please feel free to contact me if I can provide any additional information.

Sincerely,

/s/
Mushtaq Gunja
Adjunct Professor
Senior Vice President, American Council on Education
617-899-1862

June 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Rebecca Kamas for a clerkship position in Your Honor's chambers. For the past two and half years, Rebecca has served as the paralegal supervisor in the Transportation, Energy, and Agriculture Section of Antitrust Division of the U.S. Department of Justice. Based on my experience working closely with Rebecca, I believe she has the analytical ability, writing skills, intellectual curiosity, maturity, impeccable judgment, and work ethic to make an excellent clerk.

I should begin by explaining that paralegals in the Antitrust Division have a very different work experience from paralegals who work in private firms. The government's resource constraints leave us heavily reliant on Rebecca and the approximately fourteen paralegals she supervises to perform vital, substantive work on investigations and litigations. Whereas private firms may rely principally on junior associates or contract attorneys for document review, at the Division paralegals typically perform a majority of our document review, which involves more than just ticking through a pre-selected group of documents. To successfully help us find the most relevant and probative documents, our paralegals need to develop a deep understanding of both the facts of the industry we are investigating and the substantive antitrust laws that we enforce. Paralegals are frequently asked to evaluate particular custodians or design searches to identify documents that fit abstract criteria (for example, documents that illustrate the nature of competition between two merging companies). Paralegals are also called upon to write first drafts of memoranda summarizing interviews with market participants, requiring both strong writing skills and an ability to ascertain what information is important to an investigation or litigation. Rebecca is also often the first line of defense against potentially anticompetitive mergers, conducting the initial review of the hundreds of Hart-Scott-Rodino Act merger filing forms that we receive each year and flagging transactions that may raise concerns and need further review by an attorney.

In many ways, Rebecca already functions like one of our trial attorneys. Rebecca has often dived in to provide direct casework support on specific investigations or litigations while superbly managing her supervisory responsibilities. This has included handling investigatory interviews with potential witnesses and working with her attorney colleagues to assess the facts and determine next steps. Rebecca not only masters the facts and keeps the team organized, but also shows a keen understanding of the governing legal framework, enabling her to help us spot potential substantive issues and to contribute to our strategic decision making on an equal footing with the attorneys.

Rebecca has excelled in this challenging and substantive role during a particularly difficult time. Although she had previously served as a line paralegal in the Division's Technology and Digital Platforms section, Rebecca's tenure as paralegal supervisor in our section began just a few months after the start of the COVID-19 pandemic, requiring Rebecca to forge relationships with her new colleagues almost entirely virtually. As the pandemic wore on and we needed to hire new paralegals to replace those departing, Rebecca developed a plan to onboard, train, and integrate the new arrivals in a fully remote environment. As the economy began to recover, there was a record surge in merger filings, and Rebecca developed a new process for managing the intake and assignment of the filings and single-handedly reviewed many of them herself. After the election, new leadership arrived in the Division with the goal to reinvigorate antitrust enforcement and to bring more cases to trial, leading to an increase in workload with no immediate increase in staff. This past year, for instance, the section litigated two major, complex antitrust trials, and we heavily depended on Rebecca's leadership to train and guide our paralegal teams to help us put on polished and professional trial presentations. As a supervisor, Rebecca identifies paralegals who are in need of additional training or support, not only teaching them how to perform their vital day-to-day tasks, but also teaching them the basics of antitrust economics and law so they can effectively contribute to our case development. Rebecca is also responsible for composing the annual reviews for her paralegals and managing performance or conduct issues.

Finally, Rebecca is unfailingly a delight to work with. She accomplished all of her many duties while attending law school in the evenings at Georgetown, and this past semester, while continuing to manage her responsibilities in our office, she served as a part-time legal intern in another component of the Department, further honing her already impressive analytical and writing skills. She doggedly pursued her studies without ever missing a beat in the office. And she did all this while maintaining constant patience, poise, and impeccable judgment even as the demands on her time escalated.

Rebecca would make an exceptional law clerk, and I am confident that she would bring to Your Honor's chambers the same diligence, dependability, and skill that she displays here at the Antitrust Division. Please feel free to contact me at the number below if there is any additional information I can provide about Rebecca's work here at the Division.

Respectfully,

Chief
Transportation, Energy, and Agriculture Section
Antitrust Division
(202) 532-4928
Robert.Lepore@usdoj.gov

Lepore Robert - Robert.Lepore@usdoj.gov